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Law and Racism in an Asian Setting: An Analysis of the British Rule of Hong Kong

By RICHARD KLEIN*

I. Introduction

As 1997 nears, and the British government prepares to hand over land it has ruled since 1842 to the People's Republic of China,¹ the nature of the British control of Hong Kong—a world renowned symbol of capitalism—must be understood. The British portrayal of themselves, in these final years of governance, as the promoters and champions of democracy confronting the anti-democratic obstacle of the People's Republic of China is a distortion of the very nature of the British rule.

This article will analyze and illustrate the British use of law as a tool to consolidate control of Hong Kong in the hands of a privileged minority. The British enacted legislation which in some respects instituted two sets of laws—one for the Europeans and another for the Chinese. Laws were passed to ensure that no Chinese would live in the most desirable areas in Hong Kong, which the British wished to preserve as their exclusive enclaves. In a land in which ninety-eight percent of the population was Chinese, English was the official language. The Chinese language was not permitted to be used in government offices. Laws regulating conduct were written exclusively in English, a language which the vast majority of the population could

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1. On July 1, 1997, Hong Kong will become a Special Administrative Region (SAR) of the People's Republic of China. The Hong Kong SAR was established pursuant to Article 31 of the Constitution of the People's Republic of China: "The State may establish special administrative regions when necessary. The systems to be instituted in special administrative regions shall be prescribed by law enacted by the National People's Congress in the light of specific conditions." The document providing for the transfer of Hong Kong from Britain to China—formally entitled *A Draft Agreement Between the United Kingdom of Great Britain and Northern Ireland and the Government of the People's Republic of China on the Future of Hong Kong*, Sept. 1984, Misc. No. 20,11—provides for the Hong Kong SAR to have a high degree of autonomy except in the areas of foreign affairs and defense.

not understand. The astonishing truth of the failure of the Hong Kong Chinese to develop a significant pro-democracy or pro-independence movement, while other British colonies obtained independence long ago, testifies to the success of the British laws in accomplishing the goal of continued colonial rule over this land of six million inhabitants.

II. The Early Days of Colonial Rule

The lust for money was at the root of the British acquisition of Hong Kong Island in 1842. As the British Prime Minister wrote soon thereafter, Hong Kong was seized "solely and exclusively with a view to commercial interest."² Satisfaction of this interest had required British victory in a bitter, hard-fought war. Nineteenth century "Gun-boat Diplomacy" was at work.

Since the middle of the eighteenth century, the British East India Company had sought to establish a protected area in the waters around China.³ China itself, however, was uniquely self-sufficient and supported only a severely restricted trade with European powers and had little demand for western products—except opium. In 1813 Britain took over the East India Company⁴ and the opium trade then became a vital source of revenue to England, as well as a huge drain to China. In fact, by 1837 an amount equivalent to fifty percent of the total revenue of the Chinese government (US\$20 million) was used to

2. GREAT BRITAIN COLONIAL OFFICE, Doc. No. 32 (Mar. 7, 1846).

3. The East India Company had begun trading with Canton in 1699. The Emperor of China had continually refused permission to extend trade beyond Canton. In the eyes of many Western historians, China wanted to limit trade with the West because it considered itself a superior culture to the Western "barbarians." See, e.g., JACK BEECHING, *THE CHINESE OPIUM WARS* 20 (1975) ("the Chinese felt profoundly that whatever lay beyond the frontier must be dark, blank and hostile"). The Chinese viewed the British as the most ferocious of all the barbarians. HONG KONG 35 (Leonard Lueras et al. eds., 1983). Westerners visiting China reported Chinese mobs yelling "Foreign Devil" at them. See HENRY LETHBRIDGE, *HONG KONG: STABILITY AND CHANGE* 209-10 (1978). There is frequent reference in Chinese documents of the 17th, 18th, and 19th centuries to the *Han-Chien*, the "Chinese evil-doers"—referring to the Chinese people who learned foreign languages, befriended or corresponded with foreigners, or in any way entered the employ of foreigners. ARTHUR WALEY, *THE OPIUM WAR THROUGH CHINESE EYES* 232 (1958).

4. Shortly afterward, in order to increase revenues and to meet the new threat of competition from the Americans and the Portuguese, the price of opium was reduced and production levels were sharply increased. BEECHING, *supra* note 3, at 11. See also J.M. BRAGA, *HONG KONG AND MACAO: A RECORD OF GOOD FELLOWSHIP* (1960). In 1833, Parliament legislated that the Company's privileges would not be renewed and that there would be free and open trade for all British merchants. *Id.* at 53. British traders began coming into the area "like bees to a honey pot" to get a piece of the ever-increasing opium market. BEECHING, *supra* note 3, at 42.

pay for opium.⁵ From the late eighteenth century to 1838 the amount of opium that the British exported to China increased forty fold.⁶

China first attempted to ban the importation of opium in 1729, when Emperor Yang Cheng proclaimed the first anti-opium edict.⁷ In 1839 China made a more serious attempt to prevent opium from entering the country when the Imperial Commissioner Lin Tse-hsu was appointed to Canton.⁸ The Commissioner did not mince his words and immediately wrote to Queen Victoria: "We have heard that in your honorable barbarian country the people are not permitted to inhale the drug. If it is admittedly so deleterious, how can to seek profit by exposing others to its malific power be reconciled with the decrees of Heaven?"⁹

Britain's hands, indeed, were not clean. The country knew full well of the enterprise in which its merchants were engaged. In 1832 a Parliamentary Committee investigated opium dealing and, after an open and public debate, the House of Commons accepted the Committee's recommendation that "it does not seem advisable to abandon so important a source of revenue as the East India Company's monopoly of opium."¹⁰ However, an official report to His Majesty's Government described the impact of the opium trade:

5. ANTHONY ANNIESON, *THE ONE-EYED DRAGON* 13 (1989).

6. MARK MANCALL, *CHINA AT THE CENTER: 300 YEARS OF FOREIGN POLICY* 96 (1984).

7. *A DATE WITH FATE* 13 (1984) (published anonymously). The British merchants considered "the Chinese authorities a joke and put their Edicts in the wastepaper basket." MAURICE COLLIS, *FOREIGN MUD* 210 (1946). The Chinese viewed the use of opium as contrary to the Confucian emphasis on the need to keep one's body pure. This was important because the body was the all-important link between one's ancestors and one's descendants.

8. Lin Tse-hsu had been a highly respected civil servant, nicknamed "Lin the clear sky, the incorruptible." Lin had long been an alarmist about the threat opium represented and warned the Emperor that if nothing were done, in "a few decades from now we shall not only be without soldiers to resist the enemy, but also in want of silver to provide an army." BEECHING, *supra* note 3, at 67. Since the possession of opium was unlawful, yet widespread, corruption of the police and local governments resulted. HSIN-PAO CHANG, *COMMISSIONER LIN AND THE OPIUM WAR* 32 (1964).

9. See COLLIS, *supra* note 7, at 234. The Commissioner's advice was very specific, "You should immediately have the plant plucked up by the very root. Cause the land there to be hoed up afresh, sow the five grains and if any man dare again to plant a single poppy, visit his crime with . . . punishment." *Id.* at 235.

10. See H.S. WOOD, *PROLOGUE TO WAR: THE ANGLO-CHINESE CONFLICT 1800-1834* 173-74. When it comes down to a choice between the health of Asian people and money, Britain is not always on the side of health. In 1993 the British Colonial Government in Hong Kong decided to auction off to the Hong Kong Chinese five million cigarettes that had been seized as contraband. The promotion of smoking—through the enticement of cheaper-than-market-price cigarettes—conflicted with the official British Government po-

The slave trade was merciful compared with the opium trade. We did not destroy the body of the Africans, for it was our immediate interest to keep them alive; we did not debase their natures, corrupt their minds, nor destroy their souls. But the opium seller slays the body after he has corrupted, degraded and annihilated the moral being of unhappy sinners.¹¹

In March of 1839, Commissioner Lin ordered the British to surrender opium that was arriving in China and restricted the movement of Britons in Canton¹² until Britain surrendered over four million pounds of opium.¹³ Lin proceeded to destroy the opium by mixing it with lime and salt and throwing it into the sea.¹⁴ He then ordered all the Britons in Canton to leave, and he demanded the Portuguese expel the British from its nearby colony of Macao.¹⁵ The London merchant houses¹⁶ and opium traders urged armed retaliation.¹⁷

sition of discouraging smoking because of the harm to public health. Annette MacKenzie, *Non-Smokers Hooked by Tobacco Auction*, S. CHINA MORNING POST, June 4, 1993, at 2.

11. R. Montgomery Martin, *China: Political, Commercial and Social*, in an Official Report to H. M. Government 261 (1847), quoted in Karl Marx, *The Opium Trade*, N.Y. DAILY TRIB., Sept. 20, 1858, reprinted in KARL MARX ON COLONIALISM AND MODERNIZATION 341 (Shlomo Avineri ed., 1969).

12. The British in Canton desired tea, silk, porcelain, and rhubarb, and China officially designated a select group of merchants—*co-hongs*—to regulate the trade. The *co-hongs* were the only Chinese merchants permitted to trade with the non-Chinese. China did not seek to exchange its tea and silk for any commodity, and instead received silver. Canton, due to its role in commerce, had a value and dominance in relation to the rest of China at the time that perhaps has never been equaled. The foreigners were able to reside only from October to May in a specially assigned area outside of Canton. Eight regulations rigidly controlled the foreign presence, including a prohibition against learning Chinese, the mandatory use of official interpreters, the banning of any firearms, and the prohibition of employing Chinese servants. See GEORGE B. ENDACOTT, *GOVERNMENT AND PEOPLE IN HONG KONG: 1841-1962, A CONSTITUTIONAL HISTORY* 7 (1964).

13. NIGEL CAMERON, *AN ILLUSTRATED HISTORY OF HONG KONG* 18 (1991).

14. WALEY, *supra* note 3, at 44 (1958). Lin wrote an Address to the Spirit of the Sea, apologizing to the Spirit for polluting the sea with opium. Lin explained to the sea, "If it [the opium] had been cast into the flames, the charred remains might have been collected. Far better to hurl it into the depths, to mingle with the giant floods." *Id.* at 44-45. He advised the spirit to tell the creatures living in the sea to move away in order to avoid contamination. *Id.* at 46.

15. The Portuguese were the first Europeans to settle in China. In the 16th century they established a colony at Macao, the oldest European settlement in the Far East. Macao is not an island, but rather is attached to China. It is about seventy miles from Canton. During the peak period of British-Chinese battles, the British stationed the warship *Hycinth* in the Macao Harbor, but the Portuguese Governor, having agreed to a Chinese request to prohibit any foreign warship from entering Portuguese waters, immediately ordered the ship to leave. WALEY, *supra* note 3, at 95-96.

16. Traders in traditional China were not highly regarded and certainly had little influence on the Emperor's policies. It could well be that China did not expect to see the British merchants dominating British foreign policy and leading that country to war. For

Thus the First Opium War had begun, and the battles continued for over two years, even after Captain Charles Elliot, the British Plenipotentiary to China and Chief Superintendent of Trade, proclaimed that Hong Kong was annexed to Britain.¹⁸ The Foreign Office responded angrily to Captain Elliot's proclamation:

You have obtained the cession of Hong Kong, a barren Island with hardly a house upon it. . . . [I]t seems obvious that Hong Kong will not be a mart of Trade, any more than Macao is so I could not conclude this letter without saying that under these circumstances it is impossible that you should continue to hold your appointment in China.¹⁹

an account of the actions of the American merchants during these years, see JOHN KING FAIRBANK, *TRADE AND DIPLOMACY ON THE CHINA COAST* (1964).

17. For some, the opium seizure provided the excuse for which they had been waiting. For example, leading merchants several years earlier had presented London with a petition which began, "Your petitioners indulge the hope that the Government of Great Britain, with the sanction of the Legislat[ure], will adopt a resolution worthy of the Nation, and, by the acquisition of an insular possession near the coast of China, place British Commerce in this remote quarter of the globe, beyond the reach of despotism and oppression." See G.B. ENDACOTT, *AN EASTERN ENTREPOT* 16 (1964). There were more specific calls for the seizure of Hong Kong. For example, the *Canton Register*, a publication for the British traders in the city of Canton, commented in 1836, "If the lion's paw is to be put down on any part of the south side of China, let it be Hong Kong: let the lion declare it to be under his control and guarantee a free port and in ten years it will be the most considerable mart east of the Cape." E.J. EITEL, *EUROPE IN CHINA: THE HISTORY OF HONG KONG FROM THE BEGINNING TO THE YEAR 1882* 60 (1895). The avariciousness of the traders was backed by the British Royal Navy—"the most mobile and powerful weapon of war at that time existing on earth." BEECHING, *supra* note 3, at 27. One historian, writing in 1895, regarded war as inevitable: "The necessities of British trade, combined with British national and individual self-respect, were so irreconcilable with Chinese contempt of trade and Chinese notions of supremacy and autocracy, as to make war between Great Britain and China an absolute necessity." EITEL, *supra*, at 44.

18. 54 GREAT BRITAIN FOREIGN OFFICE, *GENERAL CORRESPONDENCE, CHINA SERIES* 17 (Elliot to Palmerston, Feb. 7, 1841). British merchants based in India, where the opium was grown, pressured for an island which was insular and could be protected from the Chinese. The British Governor General in India expressed this view:

The less we have to do with the Chinese Government the better, the less our merchants and their property are placed within the power of the Chinese Government the better. We only want communication with China for the purposes of trade, and the only contact between us should be that which takes place on the exchange of goods and money.

Id. (Memorandum of Ellenborough to Henry Pottinger, May 31, 1841).

19. *Id.* (Palmerston to Elliot, Apr. 21, 1841). The irony of this action—Elliot being fired for seizing the worthless Hong Kong—is, of course, monumental. Palmerston of the Foreign Office did add, "It is possible I may be mistaken in this matter." Meanwhile, Commissioner Lin was exiled to an area of China on the northwest frontier. The Emperor did this "[b]ecause Lin Tse-hsu, having been sent to Canton to manage military and foreign affairs, failed to bring either task to a successful conclusion." He was exiled to do what he

Legal possession did not occur until the August 29, 1842 signing of the Treaty of Nanking, wherein "His majesty the Emperor of China cede[d] to her majesty the Queen of Great Britain the island of Hong Kong, to be possessed in perpetuity by her Britannic Majesty, her heirs and successors, and to be governed by such laws and regulations as Her majesty the Queen of Great Britain [should] see fit to direct."²⁰ Hong Kong Island was immediately declared a "free port," a status which was to be a crucial factor in the economic growth that lay ahead. A proclamation was issued directing that the urban area on the northern side of the island "be distinguished by Her Majesty's name, Victoria."²¹

The victorious British were to receive the equivalent of US\$6 million under the treaty as compensation for the seized opium. China was thus forced to pay the British smugglers for the loss of the illegal contraband that Britain had been pushing into China. The bizarre payment was nevertheless viewed by the opium traders as insufficient.²² The treaty also provided for the opening of five ports along the China coast²³ to facilitate trade—at Canton, Amoy, Soochow,

could to expiate his crimes. See WALEY, *supra* note 3, at 154-55. Lin was recalled from exile in 1845 and died in 1850. *Id.* at 155.

20. 30 BRITISH AND FOREIGN STATE PAPERS 389, 390, *reprinted in* 93 PARRY'S T.S. 465, 467 (1979). The treaty was not formally ratified until June 26, 1843, at which time Hong Kong became a Crown Colony. The population of Hong Kong Island at the time has been variously estimated at between 2,500 to 7,500. D.M. Emyrs Evans, *Aliens on British Soil*, 8 H.K.L.J. 205, 206 (1978). The first official census showed that more than one-quarter of the population lived on boats. See GEOFFREY ROBLEY SAYER, *HONG KONG, BIRTH, ADOLESCENCE, AND COMING OF AGE* 203 (1937). After the treaty's ratification, Queen Victoria issued the Charter of 1843 establishing the office of Governor, the Executive and Legislative Councils, and the judiciary. For a revisionist view of the result of the years of fighting, see R.C. HURLEY, *PICTURESQUE HONG KONG (BRITISH CROWN COLONY)* 5 (1925) where it was noted that after the British succeeded in a series of military battles, the Chinese government "made a *voluntary* offer of the island of Hong Kong as a *gift forever*." (emphasis added).

21. Pottinger's Proclamation of June 26, 1843, *reprinted in* SAYER, *supra* note 20, at 216.

22. WILLIAM F. MAYERS, *TREATIES BETWEEN THE EMPIRE OF CHINA AND FOREIGN POWERS* 164 (1902).

23. The Emperor had repeatedly refused prior requests to open up additional ports for trade, and the desire of the British to force China to engage in trade was certainly one motive for Britain's involvement in the war. English exports to China did show a substantial increase in the years immediately following the treaty. In 1842, the exports were valued at 969,000 British pounds; in 1843 they were valued at 1,456,000; in 1844 they were valued at 2,305,000, and in 1845, almost three million pounds sterling. These figures are from the *Economist*. Reported in Karl Marx, *The Chinese Trade Figure*, N.Y. DAILY TRIB., Oct. 5, 1858, *reprinted in* KARL MARX ON COLONIALISM AND MODERNIZATION, *supra* note 11, at 354.

Shanghai,²⁴ and Ningpo—where the principle of extra-territoriality was to apply: the British merchants could reside there and yet not be subject to Chinese laws.²⁵ This concept of extra-territoriality was in direct conflict with a clause in the code of the Manchu Dynasty which specified that foreigners in China were subject to the same laws as the Chinese.²⁶

After the Treaty of Nanking, the British hoped to convince China to legalize opium. Although Britain refused to cease its importation of opium into China, Britain did offer to confine the importation of opium to only two Chinese ports if China would agree to legalize its use throughout the country.²⁷ Hong Kong Island had been a base for smuggling opium into China before the treaty, and was to become an even larger one afterwards. The second Governor of Hong Kong reported shortly after his arrival that “almost every person possessed of capital who is not connected with government employment, is employed in the opium trade.”²⁸ Small boats could easily leave the island loaded with opium and land along the southern China coast just miles away. The number of chests of opium brought into China rose from 20,000 in 1839 to 39,000 in 1845, to 52,000 in 1850,²⁹ until it reached 85,000 in 1860.³⁰

In 1885, China lifted the ban on opium and instituted a high duty on its importation. This duty led to an increase in smuggling by the

24. The concession of a new port at Shanghai rapidly led to a shift in British trade from Canton to Shanghai. Canton, approximately 1,200 miles from Beijing, a difficult trip over a series of mountain ranges, was isolated and removed from the center of power in China. The fact that people in and around Canton spoke Cantonese, a dialect not understood by the vast majority of the Chinese people who spoke Mandarin, strengthened the perception of Canton as a somewhat separate and distinct part of China. The *Parliamentary Blue Book* reported that in the years from 1844 to 1856, British exports to Shanghai increased more than tenfold while those to Canton were cut in value by one-half. *Reported in Karl Marx, The British and Chinese Treaty*, N.Y. DAILY TRIB., Oct. 15, 1858, reprinted in, KARL MARX ON COLONIALISM AND MODERNIZATION 364, *supra* note 11, at 364.

25. The annex of the General Regulations of Trade at the Treaty Ports stated that “[r]egarding the punishment of English Criminals the English Government will enact the laws necessary to attain that end, and the [British] consul will be empowered to put them into force.” Similarly, the French in their October 1844 Treaty of Whampoa provided that as to any Frenchman in China, “the French shall be subject to the law of France.”

26. WALEY, *supra* note 3, at 34.

27. E.S. Taylor, *Hong Kong as a Factor in British Relations with China 1834-1860* 204 (1967) (unpublished M.A. thesis, London University School of Oriental and African Studies).

28. G.B. ENDACOTT, *A HISTORY OF HONG KONG* 73 (1958).

29. COLLIS, *supra* note 7, at 309.

30. A DATE WITH FATE, *supra* note 7, at 14. One chest of opium is approximately 140 pounds. *Id.*

Hong Kong opium merchants. An 1891 resolution in Parliament condemning the opium trade had little effect,³¹ and revenues from the sale of opium became increasingly important to the Hong Kong Government, which received funds from the opium monopoly that controlled the opium trade.³² Legislation was enacted which set the exact prices for the various qualities of prepared opium sold in Hong Kong.³³ By 1918, the revenue to the Hong Kong government from the sale of opium was over HK\$8,000,000 and constituted 46.5% of all government revenue.³⁴ The government licensed opium farms and factories, and a significant percentage of the Chinese in Hong Kong became addicted.³⁵ It was not until after World War II that opium was made illegal in Hong Kong.³⁶

Although the desire to spread Christianity among the Chinese played no role in the reasons for obtaining Hong Kong Island, the churches lost no time in taking advantage of the new colony.³⁷ The

31. ENDACOTT, *supra* note 28, at 273. The Hong Kong officials, led by the Governor, opposed the resolution; even the Colonial Surgeon supported continuation of the opium trade. The British Society for the Suppression of the Opium Trade, after years of work dating back to 1874, was responsible for the Parliamentary vote. *Id.*

32. See CAMERON, *supra* note 13, at 211-12. By 1904, the Hong Kong Government was receiving the equivalent of US\$2 million in return for providing the concession to the monopoly. *Id.* See also *The Opium Ordinance (1914)*, in *REGULATIONS OF HONG KONG MADE UNDER THE ORDINANCES OF HONG KONG 1844-1914 (1915)* (warehouses to store opium had to be licensed by the Government, the fee for such licensing was HK\$250 per year).

33. See, e.g., *The Opium Ordinance*, *supra* note 32.

34. FRANK WELSH, *A BORROWED PLACE, THE HISTORY OF HONG KONG* 364 (1993). The government obtained revenue from the sale of opium within Hong Kong as well. Several years after Britain had colonized the island, there was debate over the legalization of the use of opium in Hong Kong itself. This was a sensitive issue because the drug was illegal in Great Britain. However, since Britain was so adamant in pressuring China to legalize opium, it was felt that the drug could not be made unlawful in Hong Kong. The Government proceeded to institute a form of luxury tax on its use—selling to the highest bidder the right to market opium within the colony. SAYER, *supra* note 20, at 160. The Treasurer of Hong Kong, R. Montgomery Martin, disagreed with the decision of the Governor, Sir John Davis, to sanction opium use, and resigned to protest the policy of seeking public revenue from a private vice. *Id.* at 160-61. The policy instituting a monopoly for the sale of opium within Hong Kong lasted only two years, and in 1847 a system was devised whereby US\$30 per month were paid to the government for a license to sell raw opium, US\$20 to refine and sell prepared opium, and US\$10 for a license to maintain an opium-smoking shop. ENDACOTT, *supra* note 28, at 60-61.

35. Estimates of those Hong Kong Chinese who regularly smoked opium ranged as high as 70%. See ENDACOTT, *supra* note 28, at 257.

36. It was the post-war military government that outlawed opium use on September 20, 1945.

37. The first Roman Catholic chapel in Hong Kong—the Chapel of the Conception—was consecrated within weeks of the formal ratification of the Treaty of Nanking. SAYER, *supra* note 20, at 132. The first Chinese translation of the Bible had appeared in 1822. See

very year of the acquisition, Christian missionaries arrived from the London Missionary Society followed almost immediately by the Anglican Church, the Congregationalists, and the Methodists.³⁸ The enthusiasm of the London Missionary Society was extreme, illustrated by their unanimously passed resolution giving "thanksgiving to God for the war between China and Great Britain, and for the greatly enlarged facilities secured by the treaty of peace for the introduction of Christianity into that Empire."³⁹ Hong Kong did become, and remains, a base for both Protestant and Roman Catholic missionary groups interested in China.⁴⁰

Chinese were attracted to the island for its opportunities in smuggling and opium dealing, not for the religious life.⁴¹ In 1844, the Gov-

LO HSIANG-LIN, *THE ROLE OF HONG KONG IN THE CULTURAL INTERCHANGE BETWEEN EAST AND WEST* 198 (1963).

38. SAYER, *supra* note 20, at 17-25. The first Protestant missionary arrived in China in 1807. BEECHING, *supra* note 3, at 11.

39. SAYER, *supra* note 20, at 64.

40. China had fervently attempted to limit the activities of the Christian churches, a goal almost equal to its desire to keep opium out of China. The head of the *Tsungh Yamen* (Foreign Office) of China reportedly told the British Prime Minister in 1863, "Rid us of your opium and your missionaries, and you will be welcome." GEOFFREY ROBLEY SAYER, *HONG KONG 1862-1919, YEARS OF DISCRETION* 27 (1975) (emphasis added).

41. Those whose interests lay elsewhere apparently chose to leave Hong Kong. The *Friend of China and Hong Kong Gazette* wrote in late 1843:

What with the insecurity of life and property from the numerous robberies and piracies . . . it is in no way surprising that some of the earliest friends of the colony have now abandoned it in disgust . . . [T]here is hardly an individual who has invested funds in Hong Kong who would not, if reimbursed his outlay, be but too glad to depart never to return—so dreary and black are our present prospects.

Reported in SAYER, *supra* note 20, at 137-38. An even gloomier report followed three weeks later: "All must admit Hong Kong as now is but a notable failure, the death-birth of the most promising settlement ever founded by British enterprise." *Id.* at 138. The negative feelings of the Chinese to the British was certainly one reason for the gloom. An 1845 article in the *Bombay Gentleman's Gazette* described the Chinese in Hong Kong as a people "who look upon the British settlers as their prey, to be plundered and butchered whenever opportunities offer." *Quoted in* 1 JAMES WILLIAM NORTON-KYSHE, *THE HISTORY OF THE LAWS AND COURTS OF HONG KONG* 88 (1898). On a number of occasions, groups of Chinese merely stood by as one Chinese attacked a European. On one such occasion, a coolie was charged with attempting to drown a British captain. Chinese people living in nearby boats were said to have watched the incident and to have offered no assistance. The government responded by issuing a notification on January 1, 1858 warning "all registered boat people that it was their duty on witnessing assaults, robberies or similar outrages to assist the party attacked . . . and not to in any way show a culpable indifference to the result." *Id.* at 451. Similarly, in 1896 when Chinese on-lookers failed to assist a police officer engaged in a battle with an alleged thief, Governor Sir John Bowring responded: "This is characteristic of the Chinese. I have known robberies to take place in crowded streets, with not the slightest interference from passengers, or from persons looking out of their doors and windows while the offenses were committed." *Id.* at 483.

ernor of Hong Kong referred to those Chinese who chose to come to Hong Kong as the "scum" of China.⁴² The highest level British official in China in the late 1840s described Hong Kong as the "great receptacle of thieves and pirates protected by the technicalities of British law."⁴³ Some of these criminals were very wealthy and were leaders among the merchants. Britons became embarrassed by the goings-on in their newest colony, and pronouncements were made by British officials in Hong Kong that smuggling must cease. However, the British traders in Hong Kong were of a different mind. As one of the pre-eminent merchants who had pushed hardest for the war against China and who had strongly supported the acquisition of Hong Kong explained, "The Plenipotentiary⁴⁴ has published a most fiery proclamation against smuggling, but I believe it, like the Chinese edicts, meaning nothing, and only intended for the Saints in England. Sir Henry⁴⁵ never means to act upon it and no doubt privately considers it a good joke. At any rate he allows the drug to be landed and stored in Hong Kong."⁴⁶ From the beginning, businessmen in Hong Kong con-

42. *Report on the Census of the Colony of Hong Kong, 1931*, HONG KONG SESSIONAL PAPERS 87 (1931).

43. Taylor, *supra* note 27, at 256 (quoting Governor Bowring). Things hardly seemed to have improved ten years later when island life was described as follows: "It was not difficult to account for a certain depression of spirits and tone of general irritability which seemed to pervade the community It was provoking that a place possessing so many scenic attractions should have been so entirely devoid of charms." 1 LAURENCE OLIPHANT, *NARRATIVE OF THE EARL OF ELGIN'S MISSION TO CHINA AND JAPAN IN THE YEARS 1857, '58, '59*, at 65 (1859).

44. The chief British official in Hong Kong, soon to be deemed the "Governor" once the colonial apparatus was in place.

45. Sir Henry Pottinger was the plenipotentiary at the time and soon became the first Governor of Hong Kong. The Colonial Regulations described the overall role of a governor of a British Crown Colony: "The Governor is the single and supreme authority responsible to, and representative of, His Majesty. He is . . . entitled to the obedience, aid, and assistance of all military, air force, and civil officers." COLONIAL OFFICE, *COLONIAL REGULATIONS, BEING REGULATIONS FOR HIS MAJESTY'S COLONIAL SERVICE*, Reg. No. 5 (1928). The power reposed in the Governor of Hong Kong was, however, greater than was the norm in the colonies. One Governor, Sir George Bowen, declared that the Governor's powers in some respects were "probably without precedent in any other part of the British Empire." See SAYER, *supra* note 40, at 56. In the *Instructions to the First Governor of Hong Kong from the Secretary of State for War and the Colonies* in 1843, it was stated: "[I]n the very peculiar circumstances of Hong Kong, Her Majesty's Government have thought it right to confer upon you the extra-ordinary power of passing laws independently of [the Legislative Council's] assent should the necessity for such a proceeding arise." ENDACOTT, *supra* note 28, at 37. It was reasoned that if such were to happen, the members of the council would be able to contact the Secretary of State to explain their views. *Id.*

46. COLLIS, *supra* note 7, at 309 (quoting James Matheson). Matheson, who in later years was to return to England and become a member of Parliament, had, prior to the war leading to the seizure of Hong Kong, characterized the acquisition as "inevitable." He

sidered themselves to be above the law, and they enjoyed support from the highest levels. The Governor of Hong Kong in the mid-1850s, Sir John Bowring, captured the all-encompassing importance of trade with his phrase, "Free Trade is Jesus Christ and Jesus Christ is Free Trade."⁴⁷

There was little concern for the living conditions of those who were not wealthy. No government services or aid were provided to the impoverished, except to those Europeans who had worked as seamen but had become disabled.⁴⁸ An ordinance enacted in 1845 made it a crime to "beg, or expose any sore or infirmity to view."⁴⁹ In 1854, a doctor appointed by the Hong Kong government to assess the state of the people's health issued a report describing Hong Kong as having "so much filth," full of "cowsheds, pigsties and stagnant pools" with crowded, miserable housing.⁵⁰ Nothing was done to remedy the situation. In 1860, the Colonial Surgeon prepared a report that described the horrid state of sanitation and health conditions of the Chinese in Hong Kong, but the Governor suppressed the report.⁵¹ A Sanitary Committee was appointed in 1862, and its report, issued a year later, again presented an alarming picture. However, the government once again failed to act this time on the grounds that there was insufficient revenue to enact the proposed policies.⁵²

The Colonial Surgeon did not hide his exasperation with the government. In his annual report of 1870 he stated that "it was not creditable to this colony that after the unhealthy conditions had been

glorified the goal of "obtaining a settlement of our own on which to establish ourselves, under the British flag, beside safe and unrestricted liberty of trade with the principle marts of the Empire." Taylor, *supra* note 27, at 63-64. Matheson used his profits from the opium trade to buy an island off the Scottish coast where he built his home—Lewis Castle—for over 500,000 British pounds. He remained a member of Parliament for over 20 years. BEECHING, *supra* note 3, at 130-31.

47. Quoted in BEECHING, *supra* note 3, at 295. Biblical references abound in the statements of Hong Kong Governors. Sir Alexander Grantham, Governor from 1947 to 1957, wrote, "In a Crown Colony, the Governor is next to the Almighty." SIR ALEXANDER GRANTHAM, VIA PORTS, FROM HONG KONG 42 (1965). The Governor of Hong Kong was, in fact, from the beginning entrusted with more power than was typical in the British colonies.

48. 1868 H.K. GOV'T. GAZETTE 89.

49. Government of Hong Kong, Ordinance No. 14 (1845). Destitution, resulting in begging, remained a severe problem. The Colonial Government responded to this in 1876 with an ordinance which provided for imprisonment with hard labor, a whipping of 30 strokes, or expulsion as possible punishments for beggars. Government of Hong Kong, Ordinance No. 8 (1876).

50. See CAMERON, *supra* note 13, at 86.

51. See ENDACOTT, *supra* note 28, at 114.

52. *Id.* at 115.

pointed out both by myself and the Sanitary Commission, they should remain as they are, a source of disease and death.”⁵³ And for those who were not merchants but who did break the laws, the jail crammed as many as sixteen people into a cell constructed for one.⁵⁴ A report by the Colonial Surgeon in 1861 found the overcrowding, the lack of ventilation, and the stench in the prison to be “beyond description.”⁵⁵ The jail simply could not handle the number of prisoners, which had almost doubled in the four years from 1858.⁵⁶ A plan to reduce the inmate population was devised. Prisoners would be released upon agreeing to be deported and branded on the left earlobe so they could be spotted easily should they attempt to return. Within one year the prison population fell to half of what it had been.⁵⁷

Opium dens, whorehouses, and gambling parlors thrived.⁵⁸ In 1859, *The Times of London* reflected the perception in England of Hong Kong as a place “always connected with some fatal pestilence, some doubtful war, or some discreditable internal squabble. So much so that the name of this noisy, bustling, quarrelsome, discontented and insalubrious little island may not ineptly be used for an euphonious synonym for a place not mentionable in polite society.”⁵⁹ The newspaper minced no words, and added: “We cannot wish that the sea should take [Hong Kong] back to itself, because English life and English property would be endangered; but if these could be withdrawn, we should very willingly resign any benefits which we derive from its possession, to be relieved of the inconveniences which it forces upon us.”⁶⁰ That same year, the Attorney-General was dismissed from his position because he had accused the Registrar-General of associating with pirates; the Registrar-General had implied that the Captain Superintendent of Police had financial interests in brothels; an editor of a Hong Kong newspaper accused the Colonial Secretary of accepting bribes to influence decisions regarding the opium monopoly; and even the Governor was accused of giving government contracts to a fa-

53. *Id.*

54. See CAMERON, *supra* note 13, at 86.

55. See ENDACOTT, *supra* note 28, at 114-15.

56. *Id.* at 113.

57. *Id.* at 184. The “remedy” for over-crowding was short-lived, however, and annual reports submitted by the Superintendent of the Prison frequently referred to the excessively crowded conditions. See, e.g., 1 NORTON-KYSHE, *supra* note 41, at 413 (annual report of 1890, referring to the “scandalous state of overcrowding” in the prison).

58. *Hong Kong Grievances*, TIMES (London), Mar. 15, 1859.

59. *Id.*

60. *Id.*

vored firm.⁶¹ Not even the courts were immune from the spirits of the time—the Chief Judge was tried for drunkenness, found guilty, and suspended.⁶²

As Hong Kong grew in population, the British government desired to possess Kowloon, a part of the Chinese mainland directly across from Hong Kong Island, for security reasons⁶³ as well as to show the Chinese that if Britain so desired it could assert control over more integral parts of China itself. Kowloon was not as mountainous as Hong Kong Island and was believed to be better suited for residences, with superior shelter from typhoons and improved anchorage for ships.⁶⁴

War broke out between Britain and a weakened Manchu Dynasty after attempts to persuade the Emperor of China to cede Kowloon to Britain failed.⁶⁵ As British troops approached Peking in October of 1860, China was forced to agree to the Convention of Peking⁶⁶ which provided for the Kowloon Peninsula to become part of Britain's Crown Colony of Hong Kong.⁶⁷

61. *Id.*

62. ENDACOTT, *supra* note 28, at 62-63.

63. The British commander of the land force in China, Major General Van Straubenzee, stated in 1858 that "the occupation of the [Kowloon] Peninsula was absolutely essential to the security of the Island." GERALD S. GRAHAM, *THE CHINA STATION, WAR AND DIPLOMACY: 1830-1860* 386 (1978).

64. The first Governor of Hong Kong, Sir Henry Pottinger, had concluded at the time of the Treaty of Nanking that "the Kowloon Peninsula [was] a matter hardly worth considering either in a political or military light." 54 GREAT BRITAIN FOREIGN OFFICE, GENERAL CORRESPONDENCE, CHINA SERIES 17 (Pottinger to Palmeston, Nov. 13, 1841). But some merchants had long had their eyes on Kowloon. For example, H.H. Lindsay, a chief officer of the East India Company had written regarding the "beautiful harbor" of Kowloon: "In all points both of facility of egress and ingress, and in its perfectly land locked situation, this harbour can hardly have a superior in the world." H.H. LINDSAY, *REPORT OF THE PROCEEDINGS ON A VOYAGE TO THE NORTHERN PARTS OF CHINA IN THE SHIP AMHERST 1* (1833).

65. The Taiping rebellion, beginning in 1853, was led by pro-modernization Chinese and became a significant force in southern China opposing the rule of the Manchu Dynasty. This rebellion lasted about ten years and many people fleeing China at the time escaped into Hong Kong. Some of these people were wealthy Cantonese merchants who came with their business acumen as well as their money.

66. 50 BRITISH AND FOREIGN STATE PAPERS 10, *reprinted in* 123 PARRY'S T.S. 71 (1979).

67. The Convention provided that "[t]he Emperor of China agrees to cede to Her Majesty the Queen . . . to have and hold as a dependency of Her Britannic Majesty's Colony of Hong Kong, that portion of the township of Kowloon." 123 PARRY'S T.S. at 73. Foreigners were given the right to travel anywhere in China; Britain was permitted to begin an embassy in Peking; and eleven new treaty ports were designated to expand trade.

As described by Sir Richard Macdonnell, who became Governor in March 1866, the conditions in Hong Kong and Kowloon continued to be unsanitary, with an inadequate water supply, and with the most ineffective police "that I ever came in contact with."⁶⁸ The Governor believed the colony to be heading for bankruptcy.⁶⁹ Macdonnell, having been a colonial Governor in Nova Scotia, South Australia, and the Gambia, said critically of Hong Kong, "There's no parallel between this and any other British settlement. It is a mere depot."⁷⁰

For the British who had settled in Hong Kong, separation from the Chinese was the goal. In 1858, Sir John Bowring, after having been Governor of Hong Kong for four years, wrote that "the separation of the native population from the European is nearly absolute; social intercourse between the races [is] wholly unknown."⁷¹ Such segregation was, at times, the policy of the government as well. For example, Sir Hercules Robinson, Governor at the time of the acquisition of Kowloon, wrote shortly thereafter, "My constant thought has been how best to prevent a large Chinese population [from] establishing themselves at Kowloon, and as some native population is indispensable, how best to keep them to themselves and preserve the European and American community from the injury and inconvenience of intermixture with them."⁷²

Police corruption was rampant and the high crime rate continued.⁷³ Victoria prison had become so full in 1863 that 280 prisoners had to be kept in a boat anchored in the harbor.⁷⁴ Hong Kong became a place for the booking of coolie laborers who were sent to the United States and Jamaica.⁷⁵ Women were kidnapped from Canton

68. Quoted in ENDACOTT, *supra* note 28, at 145. The Governor was so disenchanted with the poor quality and widespread corruption of the police that he decided to replace the English constables with Scottish police. *Condition of the European Working Class*, 15 J.H.K. BRANCH ASIATIC SOC. 88 (1975), reprinted in HENRY LETHBRIDGE, HONG KONG: STABILITY AND CHANGE 193 (1978).

69. ENDACOTT, *supra* note 28, at 145.

70. Quoted in *id.* at 143. The "uniqueness" of Hong Kong has been commented on by many, including other Governors shortly after arriving there. Sir Hercules Robinson, the Governor who preceded Macdonnell, wrote, "Indeed Hong Kong is totally unlike any other British dependency and its position is in many respects so grotesquely anomalous." See *id.* at 105.

71. *Id.* at 122.

72. *Id.*

73. CAMERON, *supra* note 13, at 129.

74. EITEL, *supra* note 17, at 379.

75. MASATAKA BANNO, CHINA AND THE WEST 1858-61, THE ORIGINS OF THE TSUNG LI YAMEN 72 (1964). Those who were involved in obtaining and transporting laborers were required to pay a fee to the Hong Kong Government. See HONG KONG ANNO

and brought to Hong Kong from where they were sent overseas as prostitutes to serve the growing number of Chinese men who had gone abroad to obtain employment.⁷⁶ In Hong Kong itself, houses of prostitution were classified either for European customers, and therefore to be located at the eastern end of Hong Kong, or for Chinese customers, and therefore located at the western end.⁷⁷ The prostitutes in the brothels which serviced the Europeans were required to submit to regular medical examinations,⁷⁸ whereas the women who were available for Chinese men were not so obligated.⁷⁹ Syphilis grew to epidemic proportions.⁸⁰ The Colonial Surgeon reported in 1856 that "some of the worst forms of venereal disease" were to be found in Hong Kong and that prostitutes were "suffering from the disease in the most shocking form I ever beheld. Death at last put an end to their sufferings."⁸¹

Confronted with an ever-increasing presence of gambling in both Hong Kong and Kowloon, the Governor decided that the government should share in the profits from the vice.⁸² He legalized the gambling dens in 1867 and instituted a licensing requirement as a source of rev-

VIGESIMO VICTORIAE REGINIAE, ORDINANCE NO 6 OF 1857, § 30. Not all those being transported were being transported voluntarily, at least not those being sent out of neighboring Macao where the coolie trade was an "organized slave-trade, no voluntary emigration took place at all, the unhappy men sent away were kidnapped and forced into slavery by those who made a business of enticing them on board small vessels up and down the coast." See 2 NORTON-KYSHE, *supra* note 41, at 111.

76. For official acknowledgment of this practice, see GEORGE F. BOWEN, REPORT TO THE SECRETARY OF STATE FOR THE COLONIES (1888) (referring to the "kidnapping and selling [of] women for prostitution"); reprinted in HONG KONG LEGISLATIVE COUNCIL SESSIONAL PAPERS 207 (1883). See generally SEAN O'CALLAGHAN, YELLOW SLAVE TRADE (1968) (stating that Hong Kong was "the centre of the traffic in women and children in the Far East"). Legislation was passed in 1887 to outlaw the importation of any Chinese woman under 16 years of age to be a prostitute. 1887 H.K. GOV'T GAZETTE 233.

77. Many men who came to Hong Kong left their families behind in China. The Hong Kong Census of 1881 revealed that 61% of the 150,000 Chinese living in Hong Kong were male. 1881 H.K. GOV'T GAZETTE, June 11, 1881.

78. But even within this group there were distinctions based on race. The Chinese prostitutes who served the Europeans had to go to a hospital for the medical examination, whereas the European prostitutes could be examined at home. WAI KWAN CHAN, THE MAKING OF HONG KONG SOCIETY 121 (1991).

79. WELSH, *supra* note 34, at 264-65. This was the situation after the 1888 repeal of the Contagious Diseases Act which had required all prostitutes, regardless of the ethnicity of their customers, to present themselves for medical examinations. *Id.*

80. *Id.* at 261-62.

81. *Id.*

82. This was not the first vice from which the government profited. In 1845 there was a monthly tax on brothel owners as well as individual prostitutes. See 1 NORTON-KYSHE, *supra* note 41, at 133.

enue.⁸³ Four years later, in part due to pressure from the London Missionary Society, gambling was again made illegal,⁸⁴ but the gambling and accompanying police corruption continued as before.⁸⁵ Prostitution remained legal, and the extent of governmental regulation and intervention was nothing short of astonishing. The Governmental Secretariat fixed the amount that a brothel could charge a prostitute for a room, and prostitutes had to submit three photographs and register with the Secretary for Chinese Affairs. The prostitute would then be given a photo identification card, indicating that she was registered and for what purpose. For those brothels catering to Europeans, a classification system was implemented to categorize the ethnicity—European, Chinese, or Japanese—of the prostitutes.⁸⁶

There was opposition in London both to the extent of prostitution in Hong Kong and to the Hong Kong government's profit from the activity. Officials in Hong Kong, however, resisted calls to suppress the brothels. To justify their position they offered the legal analysis of the situation by the Hong Kong Chief Justice, and former Attorney General, Sir Joseph Kemp:

I fear the danger of shaking the loyalty of the Chinese community as a whole and their confidence that the Government will respect Chinese customs generally It must be remembered that the Chinese do not view prostitution as we do. They look upon it with a

83. The legislation providing for the licensing and requiring the payment of monthly fees is most peculiar. HONG KONG ANNO VIGESIMO VICTORIAE REGINIAE, ORDINANCE NO. 9 OF 1867 acknowledges the evils of gambling (§ 18) but then goes on to permit the existence of 15 gambling houses as long as the monthly fees are paid in advance and one month's fee is deposited in the Colonial Treasury as security. A secondary goal was to free the police from the corrupting influence of bribes coming from the illegal gambling dens. It was hoped that once gambling was legalized, the perceived ineffectiveness of the police would cease, and focus could be placed on the growing problem of violent crime. See SAYER, *supra* note 20, at 23.

84. See HURLEY, *supra* note 20, at 25. A proclamation was issued by the Colonial Secretary notifying the Chinese of the prohibition of gambling. The proclamation explained:

[W]hereas, four years ago public gambling houses in this Colony were permitted by the Government to be opened, the object of which was to put a stop to the Police Constables receiving bribes, and to cause thieves and robbers to withdraw from their evil track, and whereas the experiment has proved successful . . . all kinds of gambling . . . are hereby prohibited.

1 NORTON-KYSHE, *supra* note 41, at 120-21.

85. EITEL, *supra* note 17, at 440.

86. NORMAN MINERS, HONG KONG UNDER IMPERIAL RULE 1912-1941, at 197 (1987). The European prostitutes were women who had come to Hong Kong from San Francisco, Honolulu, Sydney, and Melbourne. Prostitution was virtually the only job available for uneducated European women. LETHBRIDGE, *supra* note 3, at 197-98.

more lenient eye Prostitutes are not social outcasts to the same extent as in 'Western' countries . . . the English public do not always realize the delicacy required in ruling an alien civilization.⁸⁷

Britain acquired the final piece of land that comprises modern day Hong Kong in 1898. The Sino-Japanese War of 1894-95 had weakened China⁸⁸ and there was little military resistance to Britain's desire to annex the "New Territories."⁸⁹ Sir William Robinson, the Governor of Hong Kong at the time of the Sino-Japanese War, had called the government and empire of China "rotten weeds" endangering Hong Kong,⁹⁰ and wrote in a dispatch to the Colonial Office, "I desire to point out most forcibly that an adjustment and an extension of the boundaries of this Colony is peremptorily necessary."⁹¹ This land, contiguous to Kowloon and part of the Chinese mainland,⁹² was ac-

87. GREAT BRITAIN COLONIAL OFFICE, OFFICIAL CORRESPONDENCE CO 122/522 10 (June 9, 1931) (memorandum of Sir Joseph Kamp).

88. In a letter that was enclosed in a dispatch from the Governor of Hong Kong to the Colonial Office in London, the desire to exploit China's weakness is clear:

There can be no better time than the present. And the time is now or never. However great the success of the Japanese today, however tremendous the disgrace and humiliation of China, that Empire is too intrinsically strong, too full of resources, too patient and persevering ever to remain for any length of time in her present condition. This Japanese war will be followed by a tremendous upheaval, and China twenty years hence, will be another China from today. If anything is to be done, it is to be done now.

GREAT BRITAIN COLONIAL OFFICE OFFICIAL CORRESPONDENCE CO 537/34 (Nov. 9, 1894) (secret, No. 23, letter from Catehik Paul Chater), *cited in* PETER WESLEY-SMITH, *UNEQUAL TREATY: 1898-1997, CHINA, GREAT BRITAIN AND HONG KONG'S NEW TERRITORIES* 13-14 (1980).

89. The Convention of 1898 stated, "An extension of Hong Kong Territory is necessary for the proper defense and protection of the Colony." 90 BRITISH AND FOREIGN STATE PAPERS 17, *reprinted in* 186 PARRY'S T.S. 310 (1979). The increased range of newly-developed firearms had subjected Hong Kong Island and Kowloon to attack from hills inland that were part of China. The heads of both the military and naval forces in Hong Kong had pressured Britain to annex additional lands. *See* SAYER, *supra* note 40, at 81. Support for the annexation also came from the Hong Kong Chamber of Commerce. ENDACOTT, *supra* note 28, at 261. *See also* WESLEY-SMITH, *supra* note 88, at 11 (stating that the annexation had been the goal of a well-organized effort by Hong Kong commercial interests).

90. GREAT BRITAIN COLONIAL OFFICE, *supra* note 88. *See also* TIMES (London), June 14, 1898 (statement of the British Prime Minister Lord Salisbury in the House of Lords on June 13, 1898, stating that the additional land was required for security purposes).

91. GREAT BRITAIN COLONIAL OFFICE, *supra* note 88.

92. The New Territories also consisted of about 200 small, barren and primarily uninhabited islands. The local Chinese living in the New Territories resisted the British takeover, but the British militia easily overcame the approximately 3,000 Chinese. WELSH, *supra* note 34, at 327. The degree of opposition of the Chinese to the British presence was far greater than had been anticipated by the British at the time of the 1898 Convention. *See* WESLEY-SMITH, *supra* note 88, at 66-67.

quired in a treaty with China—the Convention of Peking—that has been widely termed an “Unequal Treaty”⁹³ since Britain obtained the land rent-free and China received nothing.⁹⁴ The New Territories constituted approximately 365 of Hong Kong’s 400 total square

93. The use of this term to describe the British seizure of the New Territories became popularized by the publication of a work based on a doctoral dissertation by a graduate student in history at Hong Kong University: *Unequal Treaty: 1898-1997, China, Great Britain and Hong Kong's New Territories* by Peter Wesley-Smith. WESLEY-SMITH, *supra* note 88. Wesley-Smith explains:

One thing seems obvious . . . the Convention of Peking is an unequal treaty. It is unequal in the sense that only one party appears to derive any benefit from it. There is no *quid pro quo* which China receives as compensation for her temporary loss of territory. In addition . . . the contracting parties were not in a position of equal bargaining power when the convention was drawn up.

Id. at 3. Wesley-Smith subsequently became a Professor of Law at Hong Kong University and in 1993 became the Dean of the Faculty of Law. A Beijing Foreign Trade Institute textbook explains the import to the People’s Republic of China of the designation “unequal treaty”:

The genuine sovereign equality between all parties concerned should become the foundation of international treaties. Consequently, in accordance with Marxism-Leninism, there are equal treaties and unequal treaties, and therefore fundamentally different attitudes towards different kinds of treaties. Equal treaties should be strictly observed. Unequal treaties are in violation of international law and without legal validity.

WANG YAO-T'EN, *INTERNATIONAL TRADE TREATIES AND AGREEMENTS* (1958), *quoted in* HUNGDAH CHIU, *THE PEOPLE'S REPUBLIC OF CHINA AND THE LAW OF TREATIES* 62 (1972). *See also* Chiu, *Certain Legal Aspects of Communist China's Treaty Practice*, 1967 PROC. AM. SOC'Y INT'L L. 117, 120 (the People’s Republic of China regards unequal treaties as illegal and void and contends they can be abrogated at any time). Wesley-Smith makes the following analogy: “Just as an agreement between individuals is not a true contract if made under duress or without consideration, so it is said, states should not be bound by treaties founded on inequality.” WESLEY-SMITH, *supra* note 88, at 3. The concept of “unequal treaties” was first used by Asian states after World War I in referring to the nineteenth century treaties whereby “Western powers forced Asian states to accept, *inter alia*, extra-territorial jurisdiction . . . territorial cessions and liability to pay tributes, etc.” Varma, *Unequal Treaties in Modern International Law*, 7 E.J. INT'L LAW 56 (1975). The People’s Republic of China also takes the position that as a successor state it is not necessarily bound by treaties entered into by the Imperial Chinese government. *See* Kathleen A. Greenberg, *Hong Kong's Future: Can the People's Republic of China Invalidate the Treaty of Nanking as an Unequal Treaty?* 7 FORDHAM INT'L L.J. 534, 557 (1984). China’s position on this point, however, finds little support in international law, which considers a country’s obligations to the international community to be unaffected by any internal change of government. I.C. HYDE, *INTERNATIONAL LAW: CHIEFLY AS INTERPRETED AND APPLIED BY THE UNITED STATES* 158 (2d rev. ed. 1945).

94. It is not uncommon, of course, for the losing side in a war to relinquish land and receive nothing in return. This is what happened after China’s losses to Britain in 1842 and 1860. After all, “to the victor goes the spoils.” But there was no war in 1898, and China succumbed to an increasingly powerful Britain’s desire for more land to strengthen the defense capabilities of Hong Kong.

miles;⁹⁵ and, unlike Hong Kong Island and Kowloon which were ceded to Britain in perpetuity, they were leased for ninety-nine years and therefore pledged to be returned to China in 1997.⁹⁶

The present colony of Hong Kong was thus completely formed after the Convention of 1898.⁹⁷ The antagonism of the Chinese Communists, who won control of China in the late 1940s, to the British presence in Hong Kong is revealed in the following Communist account of the acquisition of the territory:

Hong Kong has been Chinese territory since ancient times. This is a fact known to all, old and young in the world. . . . British imperialism came to China by pirate ships, provoked the criminal "opium war," massacred numerous Chinese people, and occupied the Chinese territory of Hong Kong. Later it snapped up the Chinese territory of Kowloon and the Chinese territory of the "New Territories." This is an enormous blood debt British imperialism owes to the Chinese people. . . . [I]t is the British imperialists who have come from thousands of miles away to seize our land by force and kill our compatriots.⁹⁸

Hong Kong, as a mecca for free trade, began to boom.⁹⁹ Within a matter of years after the acquisition of the New Territories, eighteen

95. Hong Kong Island is approximately 32 square miles in area and the Kowloon Peninsula is 3½ square miles.

96. There was no precedent as of 1898 for one country "leasing" land belonging to another for a designated time period. As far as the British were concerned, the New Territories were to be treated and regarded as though they were a British possession. See 5 HONG KONG CORRESPONDENCE RESPECTING THE EXTENSION OF THE BOUNDARIES OF THE COLONY 95 (Confidential Dispatch of Secretary of State Chamberlain to Governor Sir Henry Blake, Jan. 6, 1899), cited in WESLEY-SMITH, *supra* note 88, at 164. In case there was any doubt as to the status of the New Territories, a proclamation issued by the Hong Kong Government in April 1899 stated, "The Territories . . . are hereby declared to be part and parcel of Her Majesty's Colony of Hong Kong in like manner and for all intents and purposes as if they had originally formed part of the said Colony." Proclamation for the Application of Hong Kong Laws in the New Territories, Apr. 8, 1899, reprinted in 1899 H.K. GOV'T GAZETTE 522.

97. Although there were proposals for governing the New Territories as an independent region, the decision was ultimately made to integrate its administration into that of the existing colony of Hong Kong Island and Kowloon. See WESLEY-SMITH, *supra* note 88, at 88-90.

98. PEOPLE'S DAILY Aug. 23, 1967 (signed "Commentator" signifying an authoritative statement), in *English in NEW CHINA NEWS AGENCY* (Peking), Aug. 20, 1967, reprinted in 1 JEROME A. COHEN & HUNGDAH CHIU, *PEOPLE'S CHINA AND INTERNATIONAL LAW: A DOCUMENTARY STUDY* 382-83 (1974).

99. See Dr. Fok Kai-Cheong, *Private Chinese Business Letters and the Study of Hong Kong History—A Preliminary Report*, in *COLLECTED ESSAYS IN VARIOUS HISTORICAL MATERIALS FOR HONG KONG STUDIES* 15 (Hong Kong Urban Council ed., 1990) (by the end of the 19th century, Hong Kong had become a center for international shipping).

banks had begun conducting business: three British, three American, six Chinese, two French, two Japanese, and two Dutch.¹⁰⁰ The development of Hong Kong as a world financial center had begun.

But for the numerous poor there was widespread desperation. Hong Kong was a center for the sale of girls, by their own parents, into domestic servitude. The girls who were sold were called *mui tsai* (little sisters)¹⁰¹ and became the property of the wealthy Chinese or British who bought them. They received no salary for their work and were not free to leave. A typical "Deed for the Sale of a Daughter" in Hong Kong read as follows:

Because my husband became ill and died, and in his lifetime borrowed a sum of money which I have no means of repaying; and as the price of rice is rising, we have not enough to eat and it is difficult to make ends meet. I am therefore willing to sell my own daughter ____ to ____ family which is willing to pay ____ as the purchase price . . . when she reaches adult years, the family head will either arrange a marriage for her or make her his concubine.¹⁰²

The British allowed this sale of human beings in Hong Kong, even though slavery was, of course, illegal in England. The right of the "purchaser" to resell the young girl made it clear that the girl was no more than property. In commercialized Hong Kong, traders created a significant market in the sale and purchase of young girls, many of whom were kidnapped from China.¹⁰³ Hong Kong Attorney General, G. Phillippo, argued that the practice was legal in Hong Kong because there was no prohibition of adoption, whether accompanied by financial consideration or not.¹⁰⁴ A government report characterized the existence of the *mui tsai* as a mere "natural concomitant of Chinese paternalism."¹⁰⁵ Even after the Ching Dynasty in China out-

100. W. Gourlay, *Hong Kong and Taiwan: The Colonial Heritage*, in *FUTURE OF HONG KONG AND TAIWAN* 3 (J. Williams ed., 1985).

101. *Mui tsai* was actually a Cantonese euphemism for what was referred to more directly in Mandarin as *pei nu* (slave girl). MINERS, *supra* note 86, at 180.

102. James Hayes, *Women and Female Children in Hong Kong and South China to 1949: Documents of Sale and Transfer*, in *COLLECTED ESSAYS ON VARIOUS HISTORICAL MATERIALS FOR HONG KONG STUDIES* 37-39 (Hong Kong Urban Council ed., 1990). The *mui tsai's* master would typically profit even by releasing the girl since he would be entitled to keep the customary marriage payment when she was given off to be married.

103. Hong Zhou, *The Origins of Government Social Protection Policy in Hong Kong: 1842-1941* 111, 197-201 (1992) (unpublished Ph.D. dissertation, Brandeis University).

104. ENDACOTT, *supra* note 28, at 173-74.

105. *Russell Report on Child Adoption and Domestic Service*, HONG KONG LEGISLATIVE COUNCIL SESSIONAL PAPERS (Appendix No. 12) 238 (1935).

lawed such sales in 1910,¹⁰⁶ the Government of Hong Kong refused to criminalize the practice, and resisted even the suggestion from London that it attempt to monitor the *mui tsai* trade. The Governor, Sir Edward Stubbs, provided the following rationale to the Secretary of State in London, "Like most Asiatics, the Chinese have a deep-rooted objection to any form of interference with the privacy of their domestic life and I know that the idea of registration which they consider, probably rightly, to eventually involve some system of inspection is most repugnant to them."¹⁰⁷ Reformist groups in the colony contacted London directly, calling for the abolition of "slave-owning and slave-trading."¹⁰⁸ Finally, in 1923, the Female Domestic Service Ordinance was passed. Although it prohibited the sale of any *mui tsai* from that date forward, it only required those already possessing the girls to provide sufficient food and clothing and to not "overwork or ill-treat such *mui tsai*."¹⁰⁹ It was estimated at the time of the ordinance that half of the families in Hong Kong had at least one *mui tsai*.¹¹⁰

106. *Id.* at 36. The Nationalist Government of China in 1927 proclaimed all *mui tsai* to be emancipated. CAMERON, *supra* note 13, at 228. There were those in Hong Kong who strongly supported the outlawing of the purchase and sale of *mui tsai*. In the early 1920s, an Anti-Mui Tsai Society was founded and supported by members of the Hong Kong Chinese elite. MINERS, *supra* note 86, at 161. Support for prohibiting the *mui tsai* practice came also from some expatriates, from Chinese affiliated with churches in Hong Kong, and from philanthropic societies in Britain. *Id.* at 186-89.

107. HONG KONG LEGISLATIVE COUNCIL SESSIONAL PAPERS 232 (1929).

108. Zhou, *supra* note 103, at 203. The most active group opposing the *mui tsai* system was the Anti-Slavery and Aborigines Protection Society. The newly-appointed British Colonial Secretary, Winston Churchill, was sympathetic to the reformers and telegraphed the Hong Kong Governor regarding the *mui tsai*:

It is impossible for me to defend the existence of such an institution in a British colony if I am unable to state that no slightest element of compulsory employment is involved—this being the essence of slavery—and that freedom to leave her adopted parents or employers if she desires exists for every *mui tsai* of a certain age, both in law and in practice.

Quoted in id. at 204.

109. Government of Hong Kong Ordinance, No. 1, Female Domestic Service Ordinance (1923). It was also prohibited for one employer to sell a *mui tsai* to another. *Id.* § 8(1). Ten months after this ordinance was due to take effect, regulations were issued providing for the registration of all *mui tsai* and the issuance of identification tickets to the girls. Government of Hong Kong, Regulation No. 1, Female Domestic Service (1923). The effect of the ordinance was minor; little was done to enforce the prohibition of new *mui tsai*. The total number of *mui tsai* registered by 1931 were thought to be less than one half the actual number. Zhou, *supra* note 103, at 211-12. *See also* Hayes, *supra* note 102, at 35 (sales of *mui tsai* were continuing in Hong Kong as late as the 1950s).

110. Zhou, *supra* note 103, at 197.

It was not only young Chinese girls who were enslaved. When the South African war ended in 1902, there was a need for labor in the gold and diamond mines. Special depots, supervised by government officials, were built in the Lai Chi Kok area of Hong Kong, and indentured Chinese farm hands were shipped to South Africa.¹¹¹ This led to a protest by the Liberal Party in Britain that a "Chinese slavery" had resulted.¹¹²

Because the sanitation and housing conditions for the vast majority of Chinese in Hong Kong were abysmal, the area suffered an outbreak of bubonic plague in 1894.¹¹³ By 1896, there were 1,193 reported cases, 1,088 of which were fatal.¹¹⁴ There were 1,175 deaths in 1898, 1,428 in 1899, and in 1900 there were 1,434 deaths in which even the Europeans were being affected.¹¹⁵ However, the thousands of deaths were perhaps not considered to be the real disaster. The Governor, Sir William Robinson, sent a dispatch to the Secretary of State expressing his greatest worries: "Without exaggeration, I may assert that so far as *trade and commerce* are concerned the plague has assumed the importance of an unexampled calamity." (emphasis added).¹¹⁶ A government report in 1895 concluded that unsanitary living conditions—especially filth and overcrowding—were the prime factors causing the epidemic.¹¹⁷ In 1898, a commission was appointed to once again assess the situation. It concluded that "there are many unsanitary properties in the Colony and dwellings which, in their present condition, are unfit for human habitation."¹¹⁸ Similar conclusions had been reached by a sanitation engineer in 1882, who had found that the unhealthy living conditions were responsible for the sharply

111. SAYER, *supra* note 40, at 93. The Hong Kong quota for the South African labor force was 1,500 Chinese men. *Id.*

112. *Id.*

113. In 1873, the Colonial surgeon, Dr. Phineas Ayres, had alerted the government to the possibility of an epidemic which would be of "unenviable renown" due to the poor sanitary and housing conditions. *Annual Report of the Colonial Surgeon*, H.K. GOV'T GAZETTE 157 (1874). Dr. Ayres was particularly critical of the abundance of houses owned by Europeans and wealthy Chinese which were occupied by as many as ten families and which "would not be considered fit to put pigs in by any decent person." *Id.*

114. CAMERON, *supra* note 13, at 187.

115. *Id.* at 200.

116. See SAYER, *supra* note 40, at 73-74.

117. J.A. LOWSON, *The Epidemic of Bubonic Plague in Hong Kong 1894*, HONG KONG LEGISLATIVE SESSIONAL PAPERS 182 (1895).

118. REPORT OF THE COMMISSION TO INQUIRE INTO THE EXISTENCE OF UNSANITARY PROPERTIES IN THE COLONY 12 (1898).

reduced life expectancy of the Chinese as compared to the Britons.¹¹⁹ Specific concerns included the failure of landlords to provide clean water, decent ventilation, adequate toilets (or some means for removing human waste),¹²⁰ or to collect rubbish from the living areas.¹²¹

The way the government handled the issue of human waste—sharply criticized in the 1882 reports—reflected the atmosphere of unbridled laissez-faire capitalism. Instead of requiring landlords to provide latrines for their tenants, the government allowed businesses to profit from the provision of toilets. The Chadwick Report¹²² found that businesses owned the only latrines available for public use and required payment for their use—the amount of the payment depending on whether or not paper was provided.¹²³ The latrines were often very crowded with long lines waiting to use them.¹²⁴ The businessmen made additional profits by selling human excrement, although the value of the waste product was dependent upon the season. “The chief demand,” wrote the Sanitation Engineer, “is from April to September, when it is used to manure the mulberry trees in the silk-producing districts above Canton.”¹²⁵ The government, therefore, did not have to expend funds on sewage or waste removal.

The Chadwick Report determined that the overall living conditions for the Hong Kong Chinese were considerably worse than those of the Chinese living in Canton.¹²⁶ The property owners in Hong Kong, however, successfully resisted any attempts by the government to institute standards,¹²⁷ and to whatever extent public health laws did

119. O. CHADWICK, REPORT ON THE SANITARY CONDITIONS OF HONG KONG 22 (1882) (Colonial Office Publication, London). The report's conclusion was straightforward, “The sanitary condition of Hong Kong is defective, and calls for energetic remedial measures.” *Id.* at 4.

120. It was found that the typical house of a Chinese family had no latrine, whereas the houses of the wealthy Europeans did. *Id.* at 18.

121. *Id.*

122. *Id.*

123. *Id.* at 18-19.

124. *Id.* at 19.

125. *Id.* at 20.

126. *Id.* at 26.

127. See E.G. PRYOR, HOUSING IN HONG KONG 14 (2d ed. 1983). There was not a clear line between government and property owners. There were numerous government officials who were speculating in property. The Acting Governor in 1862, after referring to the Police Superintendent and the Assistant Registrar of the Supreme Court as land speculators, commented, “I have so frequently seen the bad effects of government officers occupying themselves with trade matters.” ENDACOTT, *supra* note 28, at 122.

exist, they were largely unimplemented.¹²⁸ As the plague worsened, pressures mounted for some response by the government. In 1887, the Public Health Ordinance established a sanitation board, but the minimal powers given to the board made this a "piffling, toothless ordinance."¹²⁹ And, as has so often been the case in Hong Kong, corrupt government officers interfered with the proper implementation of the law. A British maritime customs officer at the time described the actions of government employees entrusted with the task of improving sanitary conditions:

The "Whitewash Brigade" used to enter a house and demand a "squeeze"—otherwise the furniture and other things, such as clothing, trunks, etc., were thrown out into the streets and destroyed by fire. The Brigade consisted of foreigners [Englishmen][who did] the dirty work, and their native helpers and interpreters [who] did the money-making.¹³⁰

The bubonic plague at last abated, in part due to a scheme of Governor Sir Henry Blake to offer two cents for every rat tail that was handed in to a government office.¹³¹ In 1890 alone, 43,000 rat tails were turned into the government.¹³² Chadwick, the sanitation engineer whose report in 1882 had highlighted the unhealthy living condi-

128. ELIZABETH SINN, *POWER AND CHARITY* 160 (1989). Sinn concluded that "the plague should have come as no surprise. There were people who had for years, indeed decades, been appalled by the dreadful sanitary conditions of the Colony and by the government's inactivity, prophesying disaster." *Id.* at 159.

129. CAMERON, *supra* note 13, at 165. What is unique and of particular interest about this ordinance is the provision that two members of the Sanitary Board were to be elected by taxpayers on the jury list. This made it the first election in which someone other than a British National voted. SAYER, *supra* note 20, at 64. The Governor of Hong Kong at the time held a plebiscite of the British community to recommend if the Board should have a majority of governmental or public members. The choice was clear: 331 voted for a public member majority as contrasted to 31 who chose a majority of government officers. The Colonial Secretary in London, however, disregarded the result, commenting, "It is inconsistent with Crown colony governance to seek the guidance of a plebiscite." CAMERON, *supra* note 13, at 187. The Sanitary Board was reconstituted in 1935 as the Urban Council. *Id.* at 150.

130. Lewis C. Arlington, *THROUGH THE DRAGON'S EYES: FIFTY YEARS' EXPERIENCES OF A FOREIGNER IN THE CHINESE GOVERNMENT SERVICE* 168 (1931).

131. Modern scientists believe that the bubonic plague is carried by rats and spread by infected fleas which leave the rats and bite humans. The standard European treatment at the time was to "force the patient to drink 12 ounces of brandy with medicine, then six pounds of ice was placed on his head, while the chest, hands and feet were each loaded with one pound of ice." FRENA BLOOMFIELD, *SCANDALS AND DISASTERS OF HONG KONG* 59 (1985), *quoted in* WAI KWAN CHAN, *THE MAKING OF HONG KONG SOCIETY* 130 (1991).

132. CAMERON, *supra* note 13, at 200. It was believed, however, that a business had been created importing non-infected rats into Hong Kong from China so that the money could be collected for the tails. *Id.*

tions of the Hong Kong Chinese, returned in 1902 to reassess the situation. He found that his and others' recommendations had been ignored because they would have cost the government money and reduced the profits of wealthy property owners.¹³³ Wealthy landlords had opposed any restrictions on housing density. For example, in 1878 seventy-four wealthy property owners sent a petition to the Governor explaining their position:

In Hong Kong, as your Excellency is aware, land has become extremely valuable, and in order to make it profitable as an investment, it is necessary to take advantage to the utmost of the space in command. Chinese tenants are, as a rule, on the other hand, unable or unwilling to pay high rents for their dwelling rooms, and it is only by so dividing the houses that many families or persons can reside in each division that Chinese property is made profitable, and at the same time the lowness of rents attained.¹³⁴

The petition stridently concluded, "The principle of providing alley spaces for the purposes of admitting light and air to Chinese residents, . . . is certainly calculated to alarm and irritate those interested in land and to depreciate the value of property."¹³⁵

Perhaps the recommendations to improve the health of the people in Hong Kong were ignored because the government had other priorities. For example, in 1900 the Governor appointed a Commission to Enquire into and Report on the Question of the Existing Difficulty of Procuring and Retaining Reliable Chair and Jinricksha Coolies for Private Chairs and Jinrickshas.¹³⁶

Chadwick's 1902 Report provides a good look at who controlled Hong Kong at the end of the 19th century:

The land owner desires to get the best rental for his land by crowding as many tenants upon it as possible During the past twenty years, numerous Building Ordinances have been brought before the Legislative Council, but in each case, many salutary provisions have

133. O. Chadwick, *The Sanitary Condition of Hong Kong 1902*, in PRYOR, *supra* note 127, at 34. Chadwick wrote, "Both the design and construction of existing dwellings are defective—the Building Ordinance requires complete revision. The amended law must be enforced with more vigour and intelligence than at present." See CHADWICK, *supra* note 119, at 4.

134. CHAN, *supra* note 131, at 139.

135. *Id.* at 139-40.

136. See *Report of the Commission Appointed by His Excellency the Governor to Enquire into and Report on the Question of the Existing Difficulty of Procuring and Retaining Reliable Chair and Jinricksha Coolies for Private Chairs and Jinrickshas*, in HONG KONG LEGISLATIVE COUNCIL SESSIONAL PAPERS 803-957 (1901) [hereinafter *Chairs and Jinrickshas*].

been withdrawn or emasculated at the requests of the [Legislative Council] members . . . representing the landed interests.¹³⁷

There was no need for the wealthy to depend on building ordinances. Chadwick wrote: "Concerning European dwellings little need be said. They are substantial structures, often standing detached, with arched masonry verandas."¹³⁸ A missionary writing in 1881 noted the "numerous and elegant residences" lived in by people who "furnish their mansions at great expense" with "every native and foreign luxury."¹³⁹

III. Legislation to Institutionalize Discrimination Against the Chinese in Hong Kong

When the British annexed Hong Kong Island, the residents were told that they would be governed by the "laws, customs and usages of China."¹⁴⁰ However, in reality British-inspired ordinances enacted by the Hong Kong Legislative Council were to prevail,¹⁴¹ and although the customs of the Chinese were to be "respected,"¹⁴² they were superseded if they conflicted with any Hong Kong ordinance.¹⁴³

137. Chadwick, *supra* note 133.

138. CHADWICK, *supra* note 119, at 10.

139. L.N. WHEELER, *THE FOREIGNER IN CHINA* 242 (1881), *cited in* LETHBRIDGE, *supra* note 3, at 206.

140. Proclamation of the British Captain Elliot upon taking possession of Hong Kong Island in 1841. See 1 NORTON-KYSHE, *supra* note 41, at 6. Chinese law at the time was that of the Ching Dynasty and was primarily a criminal code. Historically, civil law issues had not been controlled by the Chinese imperial administrations but rather were in the jurisdiction of the village elders and the merchant guilds. In reality, however, the British would regard the laws of Great Britain to be paramount. The Chief Justice of Hong Kong, Sir John Carrington, put it this way:

Generally speaking, the common law of England and all statutes passed in affirmation of the common law would be immediately brought into force in a new Colony where no recognized system of law was previously administered. So far as it may be material, I think Hong Kong is to be regarded in the same light as a settlement in a country previously uninhabited.

2 NORTON-KYSHE, *supra* note 41, at 510-11.

141. Supreme Court Ordinance, No. 12, § 5 (1873) (The first legislation to establish the rule of English law in Hong Kong which provided that the laws of England were to be in force in Hong Kong). Therefore, the Hong Kong Chinese were to be subject to laws transplanted from a foreign culture halfway around the world and interpreted by judges most commonly from Britain who spoke only English.

142. In reality, there was little "respect" if the British found a custom to be bothersome. For example, an ordinance provided that, "[n]o person shall utter any shouts or cries or make other noises while playing the game known as Chai Mui." REGULATIONS OF HONG KONG 1844-1914, Summary Offenses § 12 (Sept. 22, 1900).

143. For an overview of the powers of the Legislative Council, see Peter Wesley-Smith, *Legal Limitations upon the Legislative Competence of the Hong Kong Legislature*, 11 H.K.L.J. 3 (1981). The controlling nature of legislation can be illustrated by the need for

The British rulers of Hong Kong immediately began to enact legislation that was designed to control the Chinese. Even before the Treaty of Nanking¹⁴⁴ was formally ratified, the Chief Magistrate issued the following proclamation: "Hereafter all Chinese, besides the usual watchmen, are forbidden to walk the streets after eleven o'clock at night, and whosoever shall violate this prohibition shall be arrested by the Police and brought before the Chief Magistrate for thorough examination and judgment. Let each tremblingly obey."¹⁴⁵ The criminal law was utilized in the first ordinance enacted in 1845:

If any person or persons, being of Chinese origin . . . shall be a Member or Members of the Triad Society or other Secret Societies, he, she, or they, shall in consequences thereof, be guilty of Felony, and being duly convicted thereof, shall be liable to be imprisoned for any term not exceeding three years, with or without hard labour.¹⁴⁶

If the three years imprisonment was not enough, "at the expiration of such term of imprisonment, such person shall be marked on the right cheek in the manner usual in the case of Military Deserters, and be expelled from the said Island."¹⁴⁷

When it came to punishment, the British believed that more than just incarceration was required to deal with Chinese law-breakers. For example, Ordinance No. 10 of 1844 enabled courts to adopt what the British considered the traditional form of Chinese punishment—physical beating.¹⁴⁸ The ordinance provided that courts could "sentence anyone of Chinese origin to undergo such punishment in conformity with the usages of China as has hitherto been usually inflicted on natives of China committing offenses in the colony."¹⁴⁹ This use of "local" law in a British colony was not typical of British Colonial rule. The general practice was to prohibit punishment which conflicted with

the enactment of a special ordinance—Ordinance 4 of 1856—to validate wills made in the Chinese language pursuant to Chinese law.

144. 1 NORTON-KYSHE, *supra* note 41, at 17.

145. *Id.*

146. HONG KONG ANNO OCTAVO VICTORIAE REGINIAE, ORDINANCE NO. 1 OF 1845. The Governor of Hong Kong at the time of the ordinance, Sir John Davis, regarded the Triad societies as patriotic nationalistic groups opposed to British rule. ENDACOTT, *supra* note 28, at 57. "Triad" refers to the unity of the three: heaven, earth, and man.

147. HONG KONG ANNO OCTAVO VICTORIAE REGINIAE, ORDINANCE NO. 1 OF 1845, *supra* note 146. Chinese, therefore, were being branded not for the actual commission of a criminal offense, but for merely belonging to a "secret society."

148. Government of Hong Kong Ordinance, No. 10 (1844).

149. *Id.*

English law and practice.¹⁵⁰ But a Colonial Office correspondence revealed the view that control of the "natives" in Hong Kong presented unique needs due to the "unsoluble problems that flow out of the anomalous position of Hong Kong."¹⁵¹ As James Lockhart, who held the positions in Hong Kong of both Colonial Secretary and Registrar General, bluntly stated, "British jurisprudence is excellent in theory, but in practice was quite inapplicable" to Hong Kong.¹⁵²

Ordinances were adopted which imposed a fine on any Englishman who violated them but "if the offender shall be a Chinaman" authorized a fine or flogging (lashing) of not less than five blows.¹⁵³ And for any offense for which a fine was imposed but could not be met, repeated lashings, often in public,¹⁵⁴ with a rattan were substituted.¹⁵⁵ A Police Court ordinance passed in 1847 provided for corporal punishment of "60 strikes, to be inflicted with a cane or rattan."¹⁵⁶ The floggings inflicted injuries so severe that the Colonial Surgeon found that they often created deformities and left permanent marks.¹⁵⁷

The flogging of Chinese, as ordered by the courts,¹⁵⁸ became so commonplace that the Registrar of the Supreme Court wrote:

150. This is the doctrine of "repugnancy," whereby a colonial legislature was prohibited from enacting any law that was contrary to British law. In the *Instructions of the Secretary of State for War and the Colonies to the Governor of Hong Kong* in 1843, it was stated that the repugnancy doctrine was not to be strictly applied to Hong Kong since there might be the need to enact special legislation that would be repugnant to British law. See ENDACOTT, *supra* note 28, at 38.

151. GREAT BRITAIN COLONIAL OFFICE, OFFICIAL CORRESPONDENCE 129/11 (Mar. 8, 1845).

152. WELSH, *supra* note 34, at 331.

153. See, e.g., Government of Hong Kong Ordinance, No. 9, § 8 (1857) (requiring all persons, if requested by the Police Superintendent, to aid the fire brigade in putting out fires). Ordinances which provided for flogging as punishment were considered to apply only to the Chinese even if the ordinance did not so specify. See *Comments of the Registrar of the Supreme Court of Hong Kong Regarding Ordinance No. 12 of 1861*, in 2 NORTON-KYSHE, *supra* note 41, at 89.

154. 1 NORTON-KYSHE, *supra* note 41, at 30 (describing one such flogging: "A little before sunset, the culprit was marched off from prison dressed in his own clothes and paraded down the Queen's Road, then in the presence of a large concourse of Europeans, Lascars, and Chinese, was flogged by a European.").

155. ENDACOTT, *supra* note 28, at 71.

156. Government of Hong Kong Ordinance, No. 6 (1847). The beatings of the Chinese were described as being "peculiarly distasteful" to Chinese people who have a "great terror of corporal punishment." 2 NORTON-KYSHE, *supra* note 41, at 89.

157. ENDACOTT, *supra* note 28, at 115.

158. Flogging was used also by the prison authorities. For example, when the Superintendent of Prisons determined that the diet for the prisoners was "in excess of the requirements of health," and therefore proceeded to cut back the amount of pork provided, the

Disgusting exhibitions of public flogging were reported to be of almost daily occurrence The extent to which the rattan was made use of was almost incredible The records of the Police Court, on examination, would show that there was more flogging in Hong Kong than probably in any country in the world according to the population. For the most trifling offenses the Chinese were being daily sentenced to be publicly whipped.¹⁵⁹

As Members of Parliament back in London learned of the widespread flogging, one member introduced a motion to ban flogging in Hong Kong. However, the motion failed since it was widely accepted that flogging *was* suitable for the population of the Colony.¹⁶⁰ The floggings continued even as coroner's juries were concluding that some were dying as a result of the beatings.¹⁶¹

inmates (all of whom were Chinese) refused to go to work detail. The authorities' response to this mutiny was to flog the inmates—giving 12 to 18 strokes each with a rattan. 2 NORTON-KYSHE, *supra* note 41, at 395, 398. The antagonism of the Chinese prisoners to work detail had long been a source of strife in the prisons. For example, the Superintendent of Prisons in his Annual Report for 1897 wrote:

There were 735 prisoners reported for refusing to labour during the year. Chinese prisoners . . . with very few exceptions, would be content to sit in a cell from one year's end to another and do nothing. This extreme apathy tends to induce to refusing to labour, and undoubtedly accounts for the obstinacy with which Chinese prisoners will persist in refusing to labour.

Id. at 517.

159. 2 NORTON-KYSHE, *supra* note 41, at 92. One can get a sense of the injustice from the following account from 1847: "On Saturday, the 23rd October, the Police hunted up about a dozen paupers . . . the miserable creatures were flogged The sight was described as disgusting in the extreme, some of the culprits being lepers and others beggars." *Id.* at 149. Beatings were the punishment determined by the Magistrate to be appropriate for vagrancy. In more recent years, the number of blows given depended upon the age of the recipient. See Government of Hong Kong Ordinance, No. 39 (Corporal Punishment Ordinance) (1954) (men 16 years or older received a maximum of 18 strokes, for those under 16 years of age the limit was 12).

160. 1 NORTON-KYSHE, *supra* note 41, at 141. As the Registrar to the Supreme Court stated, flogging was "a necessary punishment in a community such as this." *Id.* at 142. It was not until well over 100 years later that there appeared a sudden sensitivity to the obvious. A Magistrate in 1987 commented, regarding flogging, "The whole thing has a political complexion. After all, most of us [magistrates and judges] are Westerners and virtually everyone who comes up in front of us is Chinese. For a Westerner to sentence a Chinese to be caned in 1987 is politically very sensitive indeed." Nigel Rosser & Bradley Winterton, *Government Moves to Abolish Floggings*, S. CHINA MORNING POST, Nov. 17, 1987. The Human Rights Commission of the United Nations in 1989 concluded that the flogging occurring in Hong Kong violated the International Covenant on Civil and Political Rights. Lulu Yu, *U.N. Pressure Aids Battle to Beat Flogging*, S. CHINA MORNING POST, Jan. 29, 1989. In response to this finding, the government a few months later announced that there was to be no more flogging in Hong Kong. Tony Chan, *Government Puts Down the Cane*, H.K. STANDARD, Aug. 24, 1989, at 1.

161. See, e.g., 2 NORTON-KYSHE, *supra* note 41, at 93-94 for the report of a Chinese man who died after receiving his third flogging given in accord with the sentence of the

As further punishment, and a deliberate insult to the dignity and heritage of the Chinese, the British would cut off the long braided hair ("tails") which hung from the back of a Chinese man's head to show respect for the Emperors of China.¹⁶² However, no specific ordinance authorized tail-cutting as a punishment. Whereas section 25 of Ordinance No. 10 of 1844 as well as section 3 of Ordinance No. 15 of 1844 did authorize punishment in accordance with Chinese tradition, there was no tradition in China of tail-cutting as a form of punishment.¹⁶³ It was the Chief Justice, C.M. Campbell, who decided that tail-cutting was a desirable form of punishment.¹⁶⁴ To make certain that a Chinese man whose tail was severed would not be able to tie on a new tail, the roots of the tail were shaved off.¹⁶⁵ Men who may have been convicted of only minor offenses were thus made pariahs for life. The indignities of flogging and tail-removal affected which Chinese chose to come to Hong Kong. As the Registrar of the Supreme Court wrote: "Undoubtedly no respectable chinaman would enter a Colony and submit himself to the laws of a people of which he understood nothing, when the consequence of their infraction was a punishment that degraded him in his own eyes as well as those of his fellow-countrymen."¹⁶⁶

Executions, as well as floggings, were inflicted in public.¹⁶⁷ The gallows were permanently exposed to the public view, in the magistracy compound, in the center of the European part of the Colony.¹⁶⁸ The

court. No blame was attached to anyone for the death since, of course, the beatings had been "legally inflicted." *Id.* at 94. More information on flogging in Hong Kong is contained in the report of a 1896 Committee to Inquire into Flogging which was appointed by the Governor after two individuals died shortly after being beaten. *Id.* at 482.

162. *Id.* The tail, or "queue," was of such symbolic importance that one of the first acts done by Chinese to show their support of the successful attempt in 1911 to overthrow the Manchu dynasty and establish the Republic of China was to remove their queues. JUNG-FANG TSAI, *HONG KONG IN CHINESE HISTORY* 243 (1993). As one historian wrote, "Whereas in the spring of 1911 a Chinese discarded his queue at the risk of losing his head, in the spring of 1912 he risked his head who kept his queue." SAYER, *supra* note 40, at 112.

163. 2 NORTON-KYSHE, *supra* note 41, at 32.

164. 1 NORTON-KYSHE, *supra* note 41, at 203.

165. *Id.* at 133. A comment of John Stuart Mill seems particularly applicable: "Every-one is degraded, whether aware of it or not, when other people, without consulting him, take upon themselves unlimited power to regulate his destiny." JOHN STUART MILL, *UTILITARIANISM, ON LIBERTY AND REPRESENTATIVE GOVERNMENT* 247 (1910).

166. 1 NORTON-KYSHE, *supra* note 41, at 173.

167. Flogging continued to be inflicted as a punishment under the Corporal Punishment Ordinance until 1990, when it was abolished as being "outdated and unnecessary." Hedley Thomas, *Jail Officers Hated Caning Offenders*, S. CHINA MORNING POST INT'L WKLY., Apr. 30 - May 1, 1994, at 8, 10.

168. 2 NORTON-KYSHE, *supra* note 41, at 457-58.

death penalty was first scheduled to be used in 1845 against three Chinese men charged with attempted highway robbery. The three, however, committed suicide in prison, leading the Registrar (Official Administrator) of the Supreme Court to write: "It was generally considered a matter for regret that the salutary lesson which the native inhabitants would have received by a public execution was thus lost."¹⁶⁹ The first actual public execution in the magistracy compound was described by the Official Administrator of the Supreme Court:

The gallows for this intended victim of the criminal law had apparently been erected some days before the execution. . . . The execution was conducted in a most shameful manner, the unfortunate man, after having the rope adjusted, being obliged to wait while efforts were twice in vain made to knock out the bolt, which was only finally performed after the poor wretch had been taken off the gallows and sent to the guard-house. . . . Such a cruel and disgusting exhibition, the result of apathetic indifference towards the sufferings of the wretched prisoner, and at which humanity might well have shuddered, was by no means unprecedented in the annals of Hong Kong.¹⁷⁰

At that time Hong Kong was the only British Colony which had public hangings. In 1868, London began to exert pressure to have such executions take place within the prison yard.¹⁷¹ The local government, however, resisted, citing as always the "unique" needs of Hong Kong, especially the need for a deterrence against the Chinese—even though the typical crowd of several hundred spectators was predominately British.¹⁷² Finally, in 1895 the first "private" execution took place in Hong Kong, although it was still at the discretion of the police and prison authorities to determine in the future whether any particular hanging would be public or private.¹⁷³

The British Registrar-General was empowered by an ordinance enacted in 1846 to enter at any time any house or boat "within the Colony" which was "wholly or partly inhabited or manned by Chinese."¹⁷⁴ The preamble explained that Hong Kong was "infested by Pirates and Robbers" and that it was necessary "that such Pirates and

169. 1 NORTON-KYSHE, *supra* note 41, at 75.

170. *Id.* at 385-86. Such foul-ups in carrying out the hangings were not uncommon. *Id.* at 353.

171. 2 NORTON-KYSHE, *supra* note 41, at 457-59.

172. *Id.* at 458-59.

173. *Id.* at 460.

174. HONG KONG ANNO DECIMO VICTORIAE REGINAE, ORDINANCE NO. 7 OF 1846. A later ordinance would elaborate how the mere presence of a *single* Chinese on a boat or

Robbers, and other persons of notoriously bad character, should not be permitted to resort to or reside in the Colony."¹⁷⁵ This ordinance was a frightening exercise of Colonial power. Not only did it give the government absolute power to intrude upon the lives of its subjects, but it also specifically limited this power to use on those of Chinese ancestry. The ordinance attempted to abate Chinese antagonism by ordaining the Registrar-General with the added title, "Protector of the Chinese Inhabitants in Hong Kong."¹⁷⁶

The ordinance also required all Chinese to register with the Registrar-General. Whereas the punishment for failing to register was not to exceed fifty Hong Kong dollars, an ordinance passed the following year provided in some circumstances for the deportation of any unregistered Chinese who had no ostensible means of livelihood.¹⁷⁷ Upon being expelled from Hong Kong, a broad arrow was branded on the individual's left ear to ensure detection if a return was attempted.¹⁷⁸ This ordinance made it clear that the separation between Europeans and Chinese was ethnically and racially rooted rather than just a question of nationality: "The term European shall be taken to mean all persons other than Chinese and the term Chinese shall be taken to mean all natives of China or Chinese Natives of Hong Kong or elsewhere."¹⁷⁹

Beginning in 1857, registration with the Colonial Government was no longer considered enough, and all Chinese were required to have a night pass, issued by the Superintendent of Police, in order to be on the streets between eight in the evening and sunrise.¹⁸⁰ It was anticipated that passes would only be provided to those engaged in night-time employment. Any Chinese person out at night without a pass could be punished with fourteen days imprisonment with hard

in a building created power for the Registrar-General to enter. HONG KONG ANNO VIGESIMO PRIMO VICTORIAE REGINIAE, ORDINANCE NO. 8 OF 1858.

175. Government of Hong Kong Ordinance, No. 7, § 2 (1846).

176. *Id.*

177. HONG KONG ANNO UNDECIMO VICTORIAE REGINIAE, ORDINANCE NO. 6 OF 1847. Until 1859, the Governor was empowered to deport a Chinese to "any place in the Chinese Empire or elsewhere," but objections by the Secretary of State in London to the scope of this power led to Ordinance No. 1 of 1859 which permitted the deportation of a Chinese person only to a place within the Chinese Empire.

178. 2 NORTON-KYSHE, *supra* note 41, at 100.

179. Government of Hong Kong Ordinance, No. 6, § 17 (1847).

180. HONG KONG ANNO VIGESIMO VICTORIAE REGINIAE, ORDINANCE NO. 2 OF 1857. Magistrates held that this ordinance did not apply to females, and in response to British complaints about Chinese women being outside at night, Ordinance No. 9 of 1867 was passed making the requirement of night passes applicable to women. See 1 NORTON-KYSHE, *supra* note 41, at 105.

labor.¹⁸¹ But that punishment paled in contrast to the power given to all policemen who, between eight in the evening and sunrise, were "authorized to fire upon, with intent or effect to kill, any Chinaman whom he shall meet with and whom he shall have reasonable ground to suspect of being [there] for an improper purpose and who being challenged by him shall neglect or refuse to make proper answer to his challenge."¹⁸²

The British perception that the Chinese were there to serve them is evident in an 1866 ordinance which defined "every Chinese regularly employed in or about the Dwelling House, Office or Business Premises of any Company or Corporation" as a servant, whereas the only non-Chinese employees considered servants for the purposes of the Registration of Servants Ordinance were those employed as maids, houseboys, gardeners, boatmen, and watchmen.¹⁸³ Europeans were free to act as money-changers, but Chinese who desired to do so were required by an 1867 ordinance to obtain a license and to pay a fee to the Registrar-General.¹⁸⁴

In 1870, the law that no Chinese could be on the streets without a pass between 8:00 p.m. and sunrise was reconsidered, and the starting time was changed from 8:00 p.m. to 9:00 p.m.¹⁸⁵ The Governor was further empowered to require that any Chinese persons out in Hong Kong Island after dark were to carry with them a "lighted Lamp or Lantern."¹⁸⁶ Violation of this lantern requirement merited imprisonment for one month.¹⁸⁷ The ordinance contained no explanation for the requirement and certainly did not explain why the Chinese, but not the Europeans, were required to carry lanterns. As a result, this Light and Pass Ordinance was widely criticized as racist by Chinese businessmen and the Chinese press.¹⁸⁸

181. A rare instance of dismissal of charges against Chinese out at night without a pass occurred when the Magistrates declared that, "In our opinion it is stretching the law to a most unnecessary extent to arrest a gentleman's *chair coolies* when engaged in carrying him." See 1 NORTON-KYSHE, *supra* note 41, at 414.

182. Government of Hong Kong Ordinance, No. 2, § 11 (1857).

183. Government of Hong Kong Ordinance, No. 7 (1866).

184. Government of Hong Kong Ordinance, No. 9 (1867).

185. Government of Hong Kong Ordinance, No. 14, § 4 (1870). The requirement that Chinese have night passes was not abolished until the enactment of Ordinance No. 6 of 1897 which provided for night passes only when ordered by the Governor.

186. Government of Hong Kong Ordinance, No. 14, § 23 (1870).

187. Government of Hong Kong Ordinance, No. 13, § 31 (1883).

188. TSAI, *supra* note 162, at 99. At a well-attended public meeting in opposition to the ordinance, one leader of the Chinese community addressed the meeting and said of any Chinese who supported the ordinance, "I say those persons are not Chinese [T]hey ought to be condemned . . . some of the Chinese do not respect themselves" *Id.* at

The British perception of the Chinese as dirty, unsanitary, and diseased was illustrated in an 1895 ordinance restricting immigration. Upon finding that small pox, cholera, bubonic plague, or any other disease existed in Hong Kong, the governor was empowered to "prohibit or regulate the immigration or importation into the Colony of *any Chinese*."¹⁸⁹ There was no requirement that a link between any country and the disease be shown, and Europeans from any disease-infested country were free to come to Hong Kong. The legislation presumed the Chinese race to be disease-ridden. The Governor exhibited the same presumption in his statement in the 1894 Annual Report on Hong Kong, describing the Chinese people as "[e]ducated to unsanitary habits, and accustomed from infancy to herd together . . . they were quite content to die like sheep, spreading disease around them."¹⁹⁰

It was not just the physical conditions of the Chinese in Hong Kong that so offended the British, but rather the very character of the Chinese. For example, when the issue of the right to vote for the Chinese was presented to the Hong Kong government, the Colonial Secretary stated:

The testimony of those best acquainted with them represent the Chinese race as endowed with much intelligence, but as very deficient in the most essential elements of morality. The Chinese population of Hong Kong is, with perhaps a few honourable exceptions, admitted to stand very low in this respect. . . . The Chinese have not yet acquired a respect for the main principles on which social order rests.¹⁹¹

When the Court Registrar in 1858 prepared the jury list, which was to consist of property owners¹⁹² and taxpayers, and inadvertently in-

100. Another well-respected businessman criticized the inherent inequality of the act, "We pay more taxes than the Europeans and derive the least advantage. I condemn the Ordinance simply because it is against the Chinese only." *Id.*

189. Government of Hong Kong Ordinance, No. 5, § 1 (1895) (emphasis added). The racist nature of this ordinance is further illustrated by the provision that after any proclamation by the Governor prohibiting the entry of the Chinese, "[n]o steamer, steam-launch ship or vessel and no junk or other Chinese built boat or vessel shall bring into the waters of the Colony any passenger of Chinese nationality or origin, or any passenger *appearing to be of such nationality or origin*." *Id.* § 2 (emphasis added).

190. *Statement of Governor Sir William Robinson, in 1894 ANN. REP. ON HONG KONG* 2.

191. GREAT BRITAIN COLONIAL OFFICE, OFFICIAL CORRESPONDENCE, No. 82 (Correspondence of Secretary of State Henry Labouchere).

192. In the earliest years of the Colony, only those owning property valued at more than HK\$1,000 were eligible to serve on a jury. *See CAMERON, supra* note 13, at 70. Not

cluded, for the first time, the name of a Chinese man, the Legislative Council felt the need to engage in a debate to determine whether the individual's name should remain on the list.¹⁹³

Residents of the newly-acquired New Territories received a welcome from their British rulers by an 1899 ordinance giving the Registrar-General the power to summon any member of the Chinese race to provide information regarding activity in the New Territories.¹⁹⁴ The attorney general, in supporting the ordinance, told the members of the Legislative Council: "It is very desirable that he [the Registrar-General] should have such power . . . it would very much facilitate the government of the New Territories."¹⁹⁵ The Governor was more blunt, "The Chinese do not understand our ways . . . we have found great difficulty in getting the Chinese to come forward and give any information."¹⁹⁶

The chief civil servant in charge of administration of the New Territories advocated banishing and seizing the property of those Chinese who had most strongly resisted British occupation: "These men did not wish to enjoy the benefits of British rule, so it will be no great hardship to them to transfer their energies to a soil more congenial to them."¹⁹⁷ Banishment from the colony was provided for in the Banishment and Conditional Pardons Ordinance of 1882 wherein the Governor could prohibit virtually any Chinese person from being in Hong Kong for a period of up to five years.¹⁹⁸ It was apparently of

many qualified. In 1848 only 23 persons were entitled to be jurors. *Id.* Conditions had improved only somewhat by 1984, but still only 25,000 out of a population of about 5 million were considered eligible to serve. *Bill to Boost List of Jurors*, CHINA MORNING POST, July 19, 1984, at 16.

193. 1 NORTON-KYSHE, *supra* note 41, at 465. The Council decided to permit the Chinese to serve, and when the same issue presented itself the next year, the Legislative Council by a vote of six to three again permitted a Chinese person to serve. *Id.* at 578.

194. Government of Hong Kong Ordinance, No. 40 (1889). The Ordinance provided that "[e]very person so summoned shall be legally bound to attend before the Registrar-General at the time and place specified in such summons and to answer truthfully, all questions which the Registrar-General may put to him." *Id.* Any Chinese person who failed to respond to the summon would be subject to arrest. *Id.* §§ 3-4. The fundamental function of the Registrar-General was to act as a liaison between the Hong Kong Chinese and the government. See SAYER, *supra* note 40, at 127.

195. PAPERS LAID BEFORE THE LEGISLATIVE COUNCIL OF HONG KONG 19 (1900).

196. *Id.* at 20.

197. 5 HONG KONG CORRESPONDENCE RESPECTING THE EXTENSION OF THE BOUNDARIES OF THE COLONY 258-59 (Dispatch of Stewart Lockhart to Governor Sir Henry Blake, May 1, 1899), *cited in* WESLEY-SMITH, *supra* note 88, at 68.

198. All laws existing in the Colony of Hong Kong were extended to the New Territories on April 8, 1899 by the Proclamation for the Application of Hong Kong Laws in the New Territories. H.K. GOV'T GAZETTE 522 (1899).

little concern that any banishment would be in direct conflict with the Convention of Peking, ratified in London on August 6, 1898, which unambiguously stated, "It is further understood that there be no expropriation or expulsion of the inhabitants of the [New Territories] district."

One of the two Governor-appointed Chinese members of the Legislature,¹⁹⁹ Dr. Ho Kai, supported the ordinance allowing the Registrar-General to summon any Chinese, adding that "[o]f course, we [the Chinese people] are quite prepared to sacrifice a certain amount of our liberty."²⁰⁰ But one legislator, T. H. Whitehead, railed against the proposed legislation, saying, "The Ordinance confers powers which no Court possesses; it gives unlimited powers . . . [such as the] summary power to inflict serious punishment. It is so extensive and unlimited in its powers; so unguarded in the exercise of these powers that it is capable of the gravest abuses."²⁰¹ In an astonishingly unsupportive (and perhaps defensive) response, Dr. Ho Kai addressed the Legislature regarding the ordinance and Whitehead's comments, "I have not received any protest [regarding the Bill] from the Chinese Community whom I represent on this Council. Nor has my [Chinese] colleague If he [Whitehead] protests on behalf of the Chinese, I

199. The first appointment of a Chinese person to the Legislative Council was in 1880 by Governor Hennessey. Ng Choy was not a typical Hong Kong Chinese. He was born in Singapore, educated in England, and was the first Chinese person called to the bar in England. CAMERON, *supra* note 13, at 144-45.

200. *Id.* at 190. This was not the only occasion at which Dr. Ho Kai's position on proposed legislation was not necessarily in the best interests of the Hong Kong Chinese. After the Chadwick Report was issued, enumerating the unsanitary conditions existing in Hong Kong, legislation was introduced to improve sewage and water conditions and to require larger living units. Ho Kai opposed these proposals because he did not see why so much land should be sacrificed in order to improve the health and welfare of the Chinese. He thought that public confidence would be shaken if investors were unable to get the fullest benefit from the land they bought. Though he said he was not siding with the landlords and that he was not defending vested interests, he argued that "the poor tenant would be forced to pay enormous rent for less space than before, plus all sorts of sanitary improvements which, however good in themselves from a European standpoint, they did not care for and which they thought at least their constitutions did not require." G.H. CHOA, *THE LIFE AND TIMES OF SIR KAI HO KAI* 168-69 (1981). Choa concluded that Ho Kai, both a financier and a doctor, had acted as a businessman rather than a medical man whose primary concern would have been the health and welfare of the Chinese. *Id.* at 169.

201. Quoted in Peter Wesley-Smith, *Discriminatory Legislation in Hong Kong* (unpublished paper presented at the Symposium on the Historic Triangle of Britain, China and Hong Kong: A Sixty Year Retrospective 1927-1987, held at Hong Kong Baptist College, June 11, 1987).

should like to know what section of the Chinese Community he represents.”²⁰²

IV. Legislation to Segregate the Races

It is not surprising that the British settlers, regarding the Chinese as a lower “yellow race,” would wish to be geographically separated from them. The portrayal of the Chinese as dirty and dishonest was widespread. Typical was the *Hong Kong Telegraph*’s report of one British merchant’s claim that “the [Chinese] community including women and even children . . . pass their Sunday afternoons in filthy Chinese dens [I]s it any wonder that petty pilfering is rather the rule than the exception in almost every office and every house in Hong Kong?”²⁰³

It was not just the poor, but all Chinese, from whom the British desired to be separated. It was as though being “filthy” and “dishonest” was considered endemic to the Chinese race. The memoirs of a British police detective stationed in Hong Kong contain the following description of the British attitude: “In some cases the European looked upon the Chinese as being the lowest form of human life; I have actually seen a European ricksha passenger throw his fare money to the ground rather than risk touching the ricksha coolie.”²⁰⁴ As early as 1845, only three years after Britain seized Hong Kong Island, a group of British merchants wrote the Under-Secretary of State for the Colonies: “Amongst the Chinese merchants or even shopkeepers, there is not one who has any pretensions to the title of honest man.”²⁰⁵

Rules for segregating the Europeans from the Chinese were enacted. In some ways they resembled the apartheid policy in South Africa. For example, the Hong Kong Museum Committee, chaired by an executive of Jardines, the leading British Company, enacted a policy that Chinese could visit the museum only in the mornings. During the lunch hour, the museum was to be closed and cleaned, and then reopened exclusively for European use.²⁰⁶

202. *Reports of the Meetings in the Legislative Council*, H.K. HANSARD, Feb. 15, 1900, at 51.

203. *Quoted in* Carl T. Smith, Sham-Shui Po: From Propriety Village to Industrial-Commercial Urban Complex 17 (unpublished paper presented to the Conference on Hong Kong History and Society in Change, Chinese University of Hong Kong, Dec. 10-12, 1981).

204. KENNETH ANDREW, *HONG KONG DETECTIVE* 122 (1962) *cited in* WAI KWAN CHAN, *THE MAKING OF HONG KONG SOCIETY* 121-22 (1991).

205. ARTHUR BARING BRABANT, *THE COLONIZATION OF INDO-CHINA* 25 (1894).

206. CAMERON, *supra* note 13, at 139.

Within two years of the British occupation of Hong Kong Island, land occupied by Chinese was cleared to make way for the British.²⁰⁷ Buildings located on one and a half acres of prime land near the harbor were demolished. The governor supported the Land Officer's goals and added, "It would be very advisable for the interests of the community that the Chinese shall be removed, so as to prevent as much as possible their being mixed up with the Europeans."²⁰⁸

As the economy of Hong Kong expanded in the latter part of the nineteenth century, the British made sure that it was known that they, and not the Chinese, were responsible for the growth. In 1891, Governor Sir George Bowen verbalized this claim:

In the brief period of forty-three years which has elapsed since this island, then barren and desolate, was erected into a British colony, it has risen, by the blessings of Providence and the enterprise and energy of our race to the proud position of the third greatest mart of shipping in the British Empire, ranking next after London and Liverpool.²⁰⁹

But the next governor, Sir William Des Vieux, was not to be outdone. Eight years later, in his *Report on the Conditions and Prospects of the Colony*, he proclaimed: "It may be doubted . . . whether any spot on the earth is thus more likely to excite, or much more fully justifies, pride in the name of Englishman."²¹⁰

Indeed, pride in being British and a feeling of racial and national superiority was claimed by many who back home in Britain were not among the favored. An analysis of the social background of the British living in Hong Kong in the 1850s to the 1870s found that only a few came from upper-class families and that the majority came from the lower and middle classes.²¹¹ The appeal of life in Hong Kong for a lower-class Englishman was evidenced by the following description: "Lower class Europeans working in Hong Kong became metamorphosed into supervisors, with a Chinese labouring force under

207. It was not even clear whether Chinese could own land in Hong Kong until an 1853 ordinance was enacted. Government of Hong Kong Ordinance, No. 2 (1853) (An Ordinance for the Removal of Doubts Regarding the Rights of Aliens to Hold and Transfer Property Within the Colony of Hong Kong).

208. Dafydd E. Evans, *Chinatown in Hong Kong: The Beginnings of Taipingshan*, 10 J.H.K. BRANCH ROYAL ASIATIC SOC'Y 72 (1970).

209. CAMERON, *supra* note 13, at 178 (emphasis added).

210. Governor Sir William des Vieux, *Report on the Conditions and Prospects of the Colony*, reprinted in CAMERON, *supra* note 13, at 179.

211. LETHBRIDGE, *supra* note 3, at 181.

them.”²¹² Another social commentator about life in Hong Kong in the nineteenth century described the transformation of lower class English youths into “men of Epicurean tastes, connoisseurs in wines, [and] lavish in expenditure.”²¹³

The British residents of Hong Kong, while content to see the Chinese with no role in governing the Colony, felt that there was no valid reason why Englishmen, who were able to vote back in Britain, should not have a say in the selection of members of the Legislative Council of Hong Kong. As the Chairman of the Constitutional Reform Association of Hong Kong argued, “Self-government is our birth-right.”²¹⁴ The first petition to the House of Commons regarding voting rights for Britons was made in 1894. It justified its demand that British Nationals have the right to vote by claiming that the growth in the economy of Hong Kong was due to the “enterprise, skill and energy of British Merchants, Traders and Shipowners.”²¹⁵

As years went by, similar petitions focused on more specific issues on which the British residents wanted to be heard. In 1919, it was stated that “[t]he hour has come when a greater view in the domestic policy of this Colony should be allowed to the British residents of it . . . to deal with such questions as the Hospitals, Police, Sanitary Board, Education Administrations, Housing Reform, and the question of dealing with revenue raised within the Colony.”²¹⁶ It was never explained why the Chinese should not also be participants, surely they too were affected by the Colonial Government’s domestic policies, yet somehow they were invisible. When the Chairman of the Constitutional Reform Association of Hong Kong told supporters of electoral reform that “I think the Government has failed to realize that there is such a thing as public opinion in this Colony . . . [but] public opinion cannot and will not be ignored,” it was clear that it was

212. *Id.* Lethbridge concluded that some of the formerly-lower-class Englishmen “had taken over the style of life, the attitudes, and the behavior of a class to which many did not belong by reason of birth or education.” *Id.* at 164.

213. ALLISTER MACMILLIAN, SEAPORTS OF THE FAR EAST 366 (1923), *reprinted in* LETHBRIDGE, *supra* note 3, at 206. These Englishmen had no desire to socialize with the Chinese. *See, e.g.,* Welsh, *supra* note 34, at 379 (Hong Kong lodges of the Freemasons refusing admission to Chinese).

214. GREAT BRITAIN COLONIAL OFFICE, OFFICIAL CORRESPONDENCE 129/453.

215. GREAT BRITAIN COLONIAL OFFICE, OFFICIAL CORRESPONDENCE 131/25. The petition was entitled, “Petition to the House of Commons Praying for an Amendment of Constitution of the Crown Colony of Hong Kong.”

216. GREAT BRITAIN COLONIAL OFFICE, OFFICIAL CORRESPONDENCE 129/453. The form of government of Hong Kong at the time was considered by the British reformers to be one of “benevolent despotism.” *Id.*

not the opinion of the Chinese that he felt should be taken into account.²¹⁷

The most desirable location to live in Hong Kong was called the Peak—an elevated, cool, hilltop area from which there were panoramic views of the water, hills, islands, and buildings in Hong Kong. Until 1888, Europeans living on the Peak were carried up the slope in sedan chairs which were covered to protect them from the sun. Four Chinese chair-coolies, often dressed in strikingly colorful clothes designed by their employer,²¹⁸ were needed to carry one European up the slopes from the central business district.²¹⁹ The scene was described by Lord Ronald Gower, who as a visitor found himself “transported two thousand years back [to] ancient Rome or glorious Carthage. This illusion is helped no doubt by the coloured dresses and fanciful drapery of the Chinese and by the . . . classical style of the white houses.”²²⁰

The Peak district had become “as English as any small English provincial town.”²²¹ The scene at the Peak was described as follows:

Europeans strode along its roads and pathways, walking-stick in hand and dog at heel; European governesses . . . were to be seen shepherding small droves of European children; European guests played tennis or croquet on the lawns of European villas; European wives and husbands played bridge or attended dinner parties in the evening. The Peak Club, opened in 1902 for both men and women, soon became a centre for tea dances and bridge parties.²²²

217. *Id.* Even the public opinion of these British was ignored. The Governor opposed suggested reforms and wrote to the Colonial Secretary in London that “the existing form of Government is the best suited to a colony of the nature of Hong Kong.” *Id.*

218. See LETHBRIDGE, *supra* note 3, at 207. The elegance of the chair itself indicated one’s social standing. *Id.*

219. The British maltreatment of the Chinese coolies was well-known. See, e.g., WELSH, *supra* note 34, at 278 (citing the comments of the well-known traveler Isabella Bird that “you cannot be two minutes in Hong Kong without seeing Europeans striking coolies with their canes or umbrellas”). The British did, however, esteem the Chinese for their ability to carry the British around in their coolie chairs. As one leading British industrialist stated, “The Chinese are the only men that can carry It is the shoulder that is the power of the Chinese coolie, and that is what we want and what we must obtain.” HONG KONG CHAMBER OF COMMERCE ANNUAL REPORT 99 (1896). It was apparently difficult to obtain a satisfactory chair-coolie. See *Chairs and Jinrickshas*, *supra* note 136.

220. Quoted in WELSH, *supra* note 34, at 380. Lord Gower found that the British in Hong Kong treated the Chinese as “a very inferior race of animals to themselves.” Quoted in WELSH, *supra* note 34, at 278. The first bishop of Hong Kong, an Anglican missionary, stated that the Chinese were treated as a “degraded race of people.” Quoted in EN-DACOTT, *supra* note 28, at 71.

221. LETHBRIDGE, *supra* note 3, at 174.

222. *Id.*

In May of 1888, the electric Peak Tramway began operation to carry the wealthy up to their airy, luxurious mansions. The trip was now a mere fifteen minute ride from the downtown commercial area.²²³ However, the British feared that the existence of the tram would lead to a desire on the part of wealthy Chinese to move up to the Peak.

This fear grew and by the turn of the century manifested itself in a petition, signed by eighty of the ninety owners of homes at the Peak,²²⁴ "praying that the district in question should be reserved for the exclusive residence of non-Chinese inhabitants."²²⁵ This petition, described by the Governor in a correspondence to the King of England, argued that

The Hill District is the healthiest part of the Colony . . . [and] it is in the interests of the Colony as a whole that the European Community should be enabled to continue to live in the Colony under conditions in which their health will be preserved. The prayer of the Petitioners appeared to me so reasonable and the arguments with which they supported the Petition so forceful . . . [that] I took steps without delay in that behalf, being convinced that the future welfare of the Community as a whole was at stake.²²⁶

223. The tramway could not be used by Chinese coolies bearing a load, therefore the workmen were required to carry up every stick and stone used in building the homes. *See* CHAN, *supra* note 131, at 154.

224. Nine of the ten owners who did not sign the petition were out of the colony at the time, and the remaining owner was a Chinese who had invested in the house as a speculation and apparently did not reside there. GREAT BRITAIN COLONIAL OFFICE, OFFICIAL CORRESPONDENCE 129/322 632 (Apr. 5, 1904).

225. *Id.* The residents had probably been inspired by an earlier piece of legislation that was not applicable to the Peak. *See* Government of Hong Kong Ordinance, No. 16 (1888) (European District Reservation Ordinance). The Preamble to Ordinance No. 16 began, "Whereas the health and comfort of Europeans in a tropical climate demand conditions which are inconsistent with the neighborhood of houses crowded with occupants and otherwise used after the manner customary with the Chinese inhabitants . . . it is desirable to reserve by law" a European District wherein "it shall not be lawful to build any Chinese tenement." This ordinance, although designed to restrict the Chinese from living in the specified area—the hilly, central part of Hong Kong Island—ostensibly was focused on apartment buildings containing a high number of people living per square foot and specifically stated that nothing in the ordinance would "preclude any Chinese or other person from owning or occupying or residing in any lawful tenement in the European District." *Id.* § 6.

226. GREAT BRITAIN COLONIAL OFFICE, OFFICIAL CORRESPONDENCE 129/322 633 (Apr. 5, 1904). There was no elaboration on how the "health" of the Europeans would be endangered by Chinese moving onto the Peak, but the Governor echoed the claim, adding that prohibiting Chinese would be "in the interests of the *sanitary* welfare" of the Europeans. *Id.* at 634.

In 1904, legislation was passed to comply with the wishes of the Europeans living on the Peak. The Hill District Reservation Ordinance²²⁷ was short and concise. The bill was designed to prohibit Chinese from owning land or residing on the Peak, except that "the Ordinance shall not apply to servants of the residents of the Hill District living on the premises of their employers."²²⁸ Both of the Chinese members of the Legislative Council supported the law, although Dr. Ho Kai acknowledged that "the Bill has a decided savour of the nature of class legislation, and especially against the Chinese, and, as such, it should be my duty to oppose it in as strong a manner as possible."²²⁹

It seems likely, however, that the legislation was not so much rooted in class antagonism as in racism. The poor, of whatever race, could not afford housing on the Peak, and the petition requesting the ordinance had made it clear that it was the Chinese people, of whatever class, that were the cause of alarm.

There has been a vast increase both in the numbers and wealth of the Chinese population and the available area of building land in the lower levels being limited, the Chinese have gradually spread further and further along the lower levels until large areas, which were formerly inhabited by Europeans are now mainly in the occupation of the Chinese.²³⁰

227. Government of Hong Kong Ordinance, No. 4 (1904).

228. *Id.* §§ 3, 5. The Governor was authorized to exempt any Chinese from the operation of the ordinance. *Id.* § 4.

229. *Reports of the Meetings in the Legislative Council*, H.K. HANBARD, Apr. 19, 1904, at 18. Dr. Kai was nevertheless persuaded by the "reasonableness and expediency of the proposed law," and even was "glad to consent to a measure by which we know the health and happiness of a large section of the European Community will be promoted." *Id.* This was not the first occasion on which Dr. Ho Kai sided with the British and opposed what many considered the interests of the Hong Kong Chinese. Perhaps the most puzzling occasion was his opposition to legislation which was proposed in response to the 1882 recommendations of the Chadwick Report. Ho Kai voted against the sanitary improvements which "however good in themselves from a European standpoint, they [the Chinese people] did not care for and which they thought at least their constitutions did not require." CHOA, *supra* note 200, at 169.

230. GREAT BRITAIN COLONIAL OFFICE, OFFICIAL CORRESPONDENCE 129/322 635 (Apr. 5, 1904). A member of the Legislative Council, Henry Pollock, speaking against any repeal of the Ordinance in 1921, similarly made clear that racial, and not class antagonism, was the motive behind the legislation:

The Chinese of the Colony, extremely clever traders and merchants as they were, with their vast wealth . . . could, if the Peak were thrown open to them tomorrow, buy all Britishers, who had patiently worked at building houses and big retaining walls there and had expended a good deal of energy and foresight in selecting sites, from the Peak if the Reservation [Ordinance] were removed.

S. CHINA MORNING POST, Dec. 13, 1921, at 13.

One can almost feel the fear of the British that they would be engulfed by the yellow people they had colonized. The Peak residents were not reluctant to emphasize what was really at stake, stating for example, "In conclusion, your Petitioners submit that the future welfare of this Colony, the welfare that is of its inhabitants as a whole, and its consequent value to the Empire, depends to a very large extent on the well-being of the European section of the Community."²³¹

In two respects the ordinance did not accomplish all that had been hoped. First, the ordinance did not define who was "Chinese," and in a confidential memo from the Governor to the Secretary of State in London, the Governor explained the need for a revised ordinance: "There is in the Colony a not inconsiderable number of Eurasians who are to all intents and purposes Chinese in their habits and customs I would ask your permission to define a Chinese as including a person of Chinese race on the side of one parent only."²³² A second failure of the 1904 Ordinance was a legal loophole through which wealthy Chinese were able to buy land on the Peak and live there. The 1904 Ordinance prohibited an owner from leasing to any Chinese or permitting any Chinese to live on the Peak, but as the Governor stated in a correspondence to London, a person need not "permit" himself to do a particular thing and "consequently a Chinese is not by law debarred from residing in his own house at the Peak."²³³

The Governor, Sir Francis May, used overtly racist²³⁴ language in his confidential correspondence to the Colonial Office in London: "It

231. GREAT BRITAIN COLONIAL OFFICE, OFFICIAL CORRESPONDENCE 129/322 635 (Apr. 5, 1904).

232. GREAT BRITAIN COLONIAL OFFICE, OFFICIAL CORRESPONDENCE 129/443 356 (Sept. 5, 1917). See also LETHBRIDGE, *supra* note 3, at 176-77 (stating that the Europeans regarded Eurasians as a threat due to their anomalous and ambivalent social position, creating a climate of unease and tension).

233. GREAT BRITAIN COLONIAL OFFICE, OFFICIAL CORRESPONDENCE 129/443 356 (Sept. 5, 1917). The only non-European person to have in fact built his own house on the Peak was Sir Robert Ho Tung in 1906. Tung was associated with Jardines, a major British trading company, and was one of the richest men in Hong Kong. CHAN, *supra* note 78, at 118. No consent was granted to any member of the Chinese race for the entire life of this ordinance with one exception: In 1936, Madame Chiang Kai-shek, the wife of the head of the Kuomintang (Nationalist) Party of China, was given permission. Minutes of the Executive Council of Hong Kong, Apr. 14, 1936.

234. It seems clear that the fear was of the Chinese race and not of the lower economic class. As the Governor noted in his correspondence,

The necessity for keeping the Chinese away from the Peak is considerably stronger now than it was in 1904. The number of well-to-do-Chinese living with their wives and concubines in semi-European fashion, has largely increased. If the Chinese who are now seeking houses at the Peak are allowed to settle there,

would be little short of a calamity if an alien, and by European standards, a semi-civilized race were allowed to drive the white man from the one area in Hong Kong in which he can live with his wife and children in a white man's healthy surroundings."²³⁵ The Governor added that "European parents are bitterly opposed to any contact between their children and Chinese children."²³⁶ In fact, one hundred British families had previously petitioned the government to institute a school exclusively for European students.²³⁷ The petition claimed that the "education of the European children suffers very much from the fact that Europeans and Asians are mixed, and the European child had to be educated side by side in the same class with large numbers of Asiatics."²³⁸ It was, of course, not just the schooling that was claimed to suffer. "Constant contact with Chinese," the petition continued, "both in class-room and in play-ground must affect the formation of the character of the European boy."²³⁹

To remedy the failures of the 1904 Ordinance, a revised statute, Ordinance No. 8 of 1918, provided simply and clearly that "it shall not be lawful for any person whatsoever to reside within the Peak District without the consent of the Governor."²⁴⁰

It was not only where the Europeans resided that they desired to be free from contact with Chinese, but also where they vacationed.²⁴¹

they will no doubt set a fashion which will result in the purchase by wealthy Chinese of Peak homes at fancy prices.

GREAT BRITAIN COLONIAL OFFICE, OFFICIAL CORRESPONDENCE 129/443 386-87 (Sept. 5, 1917). By 1917, the Chinese owned 80% of the wealth of Hong Kong and paid 97% of the taxes. *Governor Sir Henry May's Address to the Legislative Council*, H.K. HANSARD, Apr. 19, 1917.

235. GREAT BRITAIN COLONIAL OFFICE, OFFICIAL CORRESPONDENCE 129/143 390 (Sept. 5, 1917).

236. *Id.*

237. HONG KONG LEGISLATIVE COUNCIL SESSIONAL PAPERS 7 (1902).

238. *Id.*

239. *Id.* Oddly enough, wealthy Chinese had presented a somewhat similar petition to the government requesting a school to be instituted for the children of Chinese merchants because of the exceedingly large numbers of students currently attending the Chinese schools "and the paucity of English teachers, and the indiscriminate and intimate intermingling of children from families of the most various social and moral standing, rendering them absolutely undesirable as well as unsuitable for the sons and daughters of respectable Chinese families." HONG KONG LEGISLATIVE COUNCIL SESSIONAL PAPERS 14 (1902).

240. Government of Hong Kong Ordinance, No. 8, § 3 (1918). It was not until 1946 that a bill was passed repealing the residential restrictions at the Peak. *Peak District (Residence) Repeal Bill (1946)*, *Reports of the Meetings of the Hong Kong Legislative Council, Session 1946*, H.K. HANSARD, at 77.

241. This was also the case where they were hospitalized. The Matilda Hospital, for example, opened in 1906 and was only for the treatment and care of white people, in accordance with the will of the major funder, Granville Sharp. WELSH, *supra* note 34, at

The southern portion of Cheung Chau Island (also known as Dumb-Bell Island) was a vacation spot for British and American missionaries. In 1919, a bill modeled after the Peak District Ordinance of 1918 was introduced which was designed to prohibit Chinese from residing there. This proposal finally stretched the limits of the Chinese members of the Legislative Council.²⁴² Mr. Lau Chu-Pak expressed disbelief that "of all people, they could have made such a request—preachers and teachers of equality and fraternity that they are."²⁴³ The other Chinese legislator who voted in opposition to the Bill, argued that "in view of the fact that the [First World] War has been won by all races in the Empire, I cannot be a party to the passing of this Bill which, in my opinion, is nothing more or less than racial legislation."²⁴⁴ All other legislators voted for the proposed law which became the Cheung Chau (Residence) Ordinance of 1919.²⁴⁵

V. The Privileged Position of the Expatriate in Hong Kong

Expatriates, whites of European ancestry who lived in Hong Kong, typically occupied positions vastly superior to those of the Chinese. The inequity not only made the Chinese second-class citizens in their own country, but also meant that those who governed were not "of the people," nor "in touch with the people," or even able to understand the voices of the people they ruled.

380. Even an American woman who was married to a Chinese man was denied admission to the hospital in 1940. *Id.* Sharp, a British Hong Kong businessman was unequivocal in his racism: "We have been too lenient in the past. When first I came to Hong Kong, every Chinese coolie doffed his cap and stood on one side to allow you to pass. When do you see a coolie do that now? We do not exercise our undoubted superiority. We must rule by power." *Id.* at 381.

242. The Attorney General in introducing the bill expected there to be criticism. *Reports of the Meetings of the Legislative Council, Session 1919*, H.K. HANSARD, at 63.

243. Quoted in Wesley-Smith, *supra* note 201.

244. *Reports of the Meetings of the Legislative Council, Session 1919*, H.K. HANSARD, at 64.

245. Government of Hong Kong Ordinance, No. 14 (1919). One legislator, in response to the opposition of the Chinese members, explained that the missionaries "selected Cheung Chan because they thereby hoped to obtain the protection of the British flag and it is that protection they desire now." *Reports of the Meetings of the Legislative Council, Session 1919*, H.K. HANSARD, at 64. Does "protection of the British flag" mean protection from interaction with the Chinese? The ordinance was repealed in 1946. *Cheung Chau (Residence) Repeal Bill (1946)*, *Reports of the Meetings of the Hong Kong Legislative Council, Session 1946*, H.K. HANSARD, at 78.

Judges, for example, were almost all expatriates.²⁴⁶ They lacked understanding of the culture, tradition, and background of those they judged. In fact, the hostility of the British judiciary to the Chinese people was evidenced by the remarks of the former Chief Justice of Hong Kong, Sir John Smale, who in 1877 described Hong Kong as "a Colony more exposed to receiving the worst characters than any Colony I know, owing to our proximity to China."²⁴⁷ As recent as 1993, the highest positions in Hong Kong's Government—the Governor, the Chief Secretary, the Financial Secretary and the Attorney General—were all held by Britons.²⁴⁸ The top echelon of the police department has historically been European,²⁴⁹ and even as late as the mid-1970s, in most governmental departments the percentage of expatriate occupants at the top positions still approached ninety-five percent.²⁵⁰ This is unlike Britain's policies in its other territories. For example, when Ceylon (now Sri Lanka) was a colony, one-third of all positions in the highest grades were reserved for the native population.²⁵¹ Starting in the 1920s, the colonial administration in India encouraged Indians to apply and train for the most senior positions. Nevertheless, in Hong Kong white expatriates occupied even the jun-

246. As of 1994, of the ten judges sitting on the highest court in Hong Kong—the Court of Appeal—only one was Chinese. Jason Gagliardi, *Gowned, Bewigged, and Sitting in Judgment from an Ivory Tower*, E. EXPRESS, Feb. 4, 1994, at 17.

247. Quoted in 2 NORTON-KYSHE, *supra* note 41, at 257. That this perception of the Chinese manifested itself in sentencing is obvious from the Chief Justice's enthusiasm for flogging. After stating that beatings were "brutal, brutalizing and unfit for a large, high-grade civilized community," he found that they were practical and useful in the "far less humanized" Colony of Hong Kong. *Id.* at 265.

248. 1993 H.K. ANN. REP. (Hong Kong Government Information Services).

249. It was not until the early 1990's that a Chinese man was appointed to head the police force. Because the British doubted the loyalty of the Chinese, Indians were brought to Hong Kong to act as lower-level police officers. IAN SCOTT, *POLITICAL CHANGE AND THE CRISIS OF LEGITIMACY IN HONG KONG* 46 (1989). For example, about 40% of the police force in the period before World War II were Indian. *Id.* As the People's Republic of China increasingly became a player in international politics, the countries in the Indian sub-continent became reluctant to allow the recruitment by the Hong Kong government of individuals who might be perceived as mercenaries serving the will of an imperialist colonial power. *Hong Kong's Black 46 Hours*, ECONOMIST, Oct. 20, 1956, at 250. Overall, of all of the divisions of local public service, it is the police force that has the highest concentration of expatriates. *Journey into the Unknown*, ASIA WK. June 15, 1984, at 16-17.

250. S.N.G. DAVIES, *One Brand of Politics Rekindled*, 7 H.K.L.J. 44, 54-55 (1977).

251. WELSH, *supra* note 34, at 381. By 1931, Ceylon had achieved virtually complete internal self-government with a Legislative Council elected by universal adult suffrage and with cabinet-level ministers all drawn from the local population. MINERS, *supra* note 86, at 126.

ior civil service posts in contrast to the policies in the other colonies of the British Empire.²⁵²

When the Japanese occupied Hong Kong during World War II, they attempted to capitalize on the racist employment policies of the British by appealing to the Asian identity of the Hong Kong Chinese. An editorial in the Japanese-controlled *Hong Kong News* of February 20, 1942, described the situation the Japanese found regarding government jobs in colonial Hong Kong: "Callow British youths, just out from school, and half-witted Englishmen were often placed in charge of departments over the heads of Asiatics who, perhaps, had spent nearly half their lives in these very same departments and who, therefore, knew their work inside out."²⁵³

Perhaps the reason for this treatment of the Chinese lay in the deeply held British belief that the Chinese were simply an inferior race. For example, in 1866, Superintendent of the Police Charles May, who had been with the Hong Kong Police for almost thirty years, rejected a proposal to recruit Chinese to join the force.²⁵⁴ He did so because "they are useless, physically and morally."²⁵⁵ Sir Alexander Grantham, a Governor of Hong Kong, reflected in his memoirs on the "mental arrogance" of the whites towards the Chinese: "The basis of the arrogance is the assumption that the European is inherently superior to the Asian, taking such form as the exclusion of Asians from clubs, downright rudeness, or a patronizing manner."²⁵⁶ The British distrust of the Chinese resulted in a reluctance to appoint Chinese to

252. Welsh, *supra* note 34, at 381. Due to sexual discrimination, the civil service was even less reflective of the population of Hong Kong. As late as 1984, only 6% of all senior civil service positions were held by women. John P. Burns & J.H. Bacon-Shone, *The Localization of the Hong Kong Senior Civil Service 6* (paper presented at the Conference on Hong Kong and 1997: Strategies for the Future, University of Hong Kong Centre for Asian Studies, Dec. 6-8, 1984). A study of promotional opportunities for male and female upper-middle level civil servants concluded that men were considerably more upwardly mobile, both in terms of rank and salary. Daniel C. K. Tang, *Promotion in Hong Kong Civil Service: A Study of Upper-Middle Civil Servants*, H.K.J. PUB. ADMIN. 112, 116 (Dec. 1982).

253. H.K. NEWS, Feb. 20, 1942, reported in HONG KONG: BRITAIN'S LAST COLONIAL STRONGHOLD 33 (Association for Radical East Asian Studies, 1972).

254. It was not as though the police force was a small, elite unit. Towards the end of the 19th century, the force had become the largest in the world, in proportion to the population. 2 NORTON-KYSHE, *supra* note 41, at 256.

255. ENDACOTT, *supra* note 28, at 160. Members of the Chinese community, unhappy with being policed exclusively by the colonial power, petitioned the government for permission to establish a patrol of Chinese watchmen to aid the existing police force. 1 NORTON-KYSHE, *supra* note 41, at 86. Registration Ordinance No. 7 of 1866 was enacted accepting the request and designating the Chinese as "District Watchman." *Id.*

256. SIR ALEXANDER GRANTHAM, VIA PORTS 104 (1965).

the judiciary. A newspaper story in 1853, said to reflect the consensus of public opinion of the British, stated the case:

We have been, are, and always will be, the consistent opponents of giving the administration of the law into Chinese hands, and we do it on the strong belief we have, that from the Emperor on the throne to the beggar on the dung-hill, there is not a Chinese who is not prepared to lie [T]here is not one who is not prepared to be bribed. . . .

There are no more corrupt people upon earth than the Chinese . . . they must be governed by English laws, administered by Englishmen.²⁵⁷

The "English laws" were written only in English, even though the vast majority of Hong Kong Chinese were not able to understand the language. The only "official language" was English, and no member of the Legislative Council, not even the Chinese members, were permitted to speak Chinese during a legislative session.²⁵⁸ Chinese who may have wished to bring a suit in the monolingual legal system were often unable to do so because there was generally no interpreter available in the courts, and all paperwork was done in English.²⁵⁹ When a Chinese person was arrested, the arresting officers and station-house police often could not even inform him of the charges.²⁶⁰

It was not until 1974 that the Official Languages Ordinance was passed which declared both English and Chinese to be official languages. Its enactment followed years of student activity which pressured the colonial government to recognize the Chinese language. On one occasion, the police burst into the office of a student newspaper and arrested those present who were planning to protest the secondary status of the Chinese language at a celebration the next day for the Queen's birthday.²⁶¹

Intermarriage between British civil servants and Chinese was discouraged. A police officer who did intermarry would not be permitted to re-enlist, and employees in the Public Works Department who intermarried were forbidden by regulation from living in government

257. 2 NORTON-KYSCHÉ, *supra* note 41, at 339.

258. STEPHEN DAVIES & ELFRID ROBERTS, *POLITICAL DICTIONARY FOR HONG KONG* 327 (1990).

259. 1 NORTON-KYSCHÉ, *supra* note 41, at 223.

260. *Id.* at 255. When a defendant was brought to criminal court to face charges, the interpreter was frequently the Joint Superintendent of the Police who was often a witness against the accused. *Id.* at 223.

261. *Police Smash Anti-British Student Move*, S. CHINA MORNING POST, Apr. 20, 1972, at 1.

quarters.²⁶² Furthermore, promotions or transfers could be denied, as illustrated by a notation in the Colonial Office file regarding a doctor: "His social position is not as good as it might be, largely because his wife is not of European origin."²⁶³ The intense feelings against an English woman marrying a Chinese man were made clear in a statement of the Committee of the Shanghai Branch of the China Association in 1898:

The chances of a happy result of such a marriage are almost nil, while there is not the slightest prospect of any change taking place during the lifetime of the present generation sufficient to justify an Englishwoman on counting on even a tolerably comfortable life if allied to a Chinese husband. The Committee wish[es] to place on record their opinion that even when the strictest inquiries show the Chinaman in question to be an honourable and well-educated man . . . and with ample means to justify his getting married, the final result is likely to be of the most disappointing description.²⁶⁴

After World War II, the returning British were somewhat more tolerant of their Chinese subjects.²⁶⁵ In the anti-colonial post-war climate,²⁶⁶ the Colonial White Paper No. 197 and the Report of the Salaries Commission 1947 recommended that civil servants be recruited from the local Chinese population as long as qualified individuals were available.²⁶⁷ However, an assessment conducted in late 1993 on the success of the localization policy concluded that the government had "paid lip service to its localization policy and continued to hire middle to senior ranking expatriates on separate packages to lo-

262. MINERS, *supra* note 86, at 81. This restriction on residence originated in part from the desire of the European wives not to live near Chinese women. *Id.*

263. *Id.* at 82.

264. 2 NORTON-KYSHE, *supra* note 41, at 520-21.

265. For example, both the Peak District (Residence) Bill and the Cheung Chau (Residence) Bill were repealed in 1946. *Reports of the Meetings of the Legislative Council, Session 1946*, H.K. HANSARD, at 77-78.

266. Colonies all around Hong Kong were gaining independence in the years following the end of the war: Indo-China from France; Indonesia from the Netherlands; Burma, Singapore, and Malaysia from Great Britain; and Formosa from Japan.

267. This policy of localization did not apply to the police, from the inspector level on up to administrators, personal secretaries, and confidential assistants. See Emily Lau, *Another British Sunset*, FAR E. ECON. REV., Nov. 15, 1984 at 50. As one Chinese member of the Legislative Council put it, "It is general knowledge that there are certain things in government which are 'for English eyes only.'" *Id.* Localization as a stated policy can be traced back to 1935 when the Colonial Secretary told the Legislative Council that the "government has fully and frankly accepted the policy of replacing whenever possible European by Asiatic employees." CAMERON, *supra* note 13, at 245.

cals."²⁶⁸ Even when a Chinese was hired for a low level starting position, his opportunities for advancement were limited. Several studies of the civil service in Hong Kong have shown that expatriates were promoted far more readily than locals,²⁶⁹ and that this was the single greatest source of dissatisfaction among Chinese employees.²⁷⁰ The Chairman of the Senior Non-Expatriate Officers' Association reported that the morale of the civil service was at an all time low in 1993.²⁷¹ The expatriates were found by one researcher to use their power in an arrogant manner which has resulted in distrust and "a generally negative attitude on the part of staff."²⁷² In a society as bureaucratic and hierarchical as Hong Kong's, there were significant re-

268. *Localisation Wedge*, S. CHINA MORNING POST, Aug. 2, 1993, available in LEXIS, News Library, Schina File. There has been a very rapid growth in the overall number of civil servants. For example, in the ten year period from 1973 to 1983, the total number of individuals employed by the government increased 66.5%. See Jane Y. C. Lee, *The Dilemmas of Governing*, in HONG KONG'S TRANSITION: PROBLEMS AND PROSPECTS 95 (Peter Wesley-Smith ed., 1993).

269. See, e.g., Tang, *supra* note 252, at 116. (expatriates were considerably more upwardly mobile in terms of both salary and rank than were local Chinese.).

270. John P. Burns, *Job Satisfaction in the Hong Kong Civil Service*, in THE HONG KONG CIVIL SERVICE: PERSONNEL, POLICIES AND PRACTICES 180 (Ian Scott & John P. Burns eds., 1984). This perceived unfairness led to a high number of resignations among the Chinese civil servants. *Id.* In 1958, the Senior Non-Expatriate Officers' Association was formed to deal specifically with promotional opportunities. Lau, *supra* note 267, at 53. The chairman of the association, Albert Lam, reported that after twenty-five years of a not-very-successful struggle, unequal treatment and personal favoritism severely restricted promotions for high ranking local Chinese. *Id.* at 53-54. The Colonial Regulations of the United Kingdom do provide that "[t]he claims of officers for promotion will be considered on the basis of official qualifications, experience and merit." Colonial Regulation No. 24. However, the senior expatriate who is evaluating "merit" may, at least on a subconscious level, be influenced by racial factors. The Senior Non-Expatriate Officers' Association remained unhappy; in 1993, John Luk Woon-Cheung, the chairman, deemed the slow pace of localization "unacceptable." See *Hong Kong's New Policy on Civil Servants Criticized*, Report of the New China News Agency, BBC SUMMARY WORLD BROADCASTS, Aug. 5, 1993, part 3, at 2.

271. *Why Civil Servants May Be Forced to Strike*, S. CHINA MORNING POST, June 13, 1993, at 11.

272. Kathleen Cheek-Milby, *Staff Relations*, in THE HONG KONG CIVIL SERVICE, *supra* note 270, at 220. It is not only the Chinese civil servants who resent the expatriates. The general view of the population is one of "envy, fear, respect, abhorrence, avoidance and aversion." LAU SIU-KAI, *POLITICS AND SOCIETY IN HONG KONG* 113 (1982). The worst ethnic tensions were, as of 1993, to be found in the legal department where 81% of the directorate officers were expatriates. Danny Gittings, *Has Racism Entered the Hong Kong Civil Service?*, S. CHINA MORNING POST, Aug. 15, 1993, at 9. The head of the association of local employees of the legal department commented that "most expatriates do the absolute minimum to integrate . . . Few develop any personal relationship with the Chinese and the only locals they meet are work-related. Many cling to their preconceived ideas and will not find time for new discoveries." *Id.*

strictions placed on the lower-ranking civil servants.²⁷³ For example, the Civil Service Regulations provided that the staff "may not publish anything which may reasonably be regarded as of a political or administrative nature without the permission of his head or deputy head of department."²⁷⁴

The conditions of employment for expatriates in the government were far superior to those for the local Chinese.²⁷⁵ Europeans received either free government housing or a housing allowance, were able to retire at the age of sixty with a superannuation scheme wherein twenty percent of their annual salary had been accumulating with interest,²⁷⁶ received free trips for the employee and family (up to six people) back to Europe every two years, and obtained partial payment of tuition for children to attend private schools in Europe.²⁷⁷ Vacation days for expatriates ranged from forty-two to fifty-nine days per year—more than twice that of the local Chinese—plus twelve days "casual leave."²⁷⁸ The salaries themselves were so high that at one point in recent years it was estimated that at least fifty-one senior gov-

273. The vast majority of civil servants belonged to the Hong Kong Chinese Civil Servants' Association, but the higher echelon workers were divided into two groups: the Senior Non-Expatriate Officers' Association and the Association of Expatriate Civil Servants. Mathew Low, *Perks Plan Hinges on Locals*, S. CHINA MORNING POST, Oct. 26, 1993, at 1.

274. Civil Service Regulations, No. 521.

275. The widely divergent treatment that has historically been given to the different ethnic groups in the police department illustrates the disparity in benefits. Any European member of the force received round trip passage to Europe after a period of five years and half pay during the permitted nine-month absence. Indian members paid for their own passage out of Hong Kong while the costs of return passage were defrayed. They were allowed to be on leave for six months at half pay. Chinese members were not entitled to a leave of absence and received a total of two weeks vacation a year. *Police Force Regulation II of 1900*, ORDINANCES OF HONG KONG 1844-1923 (Arthur D. Ball ed., 1924). Even looking solely at salary levels, the European was historically far better off. For example, a British police officer in 1914 was paid more than seven times as much as a Chinese policeman. In 1939, a European police sergeant was paid almost eight times as much as his Chinese counterpart. MINERS, *supra* note 86, at 79.

276. S.N.G. Davies, *One Brand of Politics Rekindled*, 7 H.K.L.J. 60-61 (1977).

277. *Perks of Civil Servants Under Fire*, S. CHINA MORNING POST, Oct. 26, 1984, at 18. It was estimated that the costs to the Hong Kong Government for an expatriate employee was 1.72 times that of a local Chinese employee who may have officially been at the same salary level. CHENG T. YUNG, *THE ECONOMY OF HONG KONG* 28 (1977). In 1986, in order to quicken the pace of localization, the retirement age for senior expatriate civil servants was reduced from 60 to 57. DAVIES & ROBERTS, *supra* note 258, at 281.

278. Mary Lee, *In Search of Local Colour*, FAR E. ECON. REV., Mar. 10, 1978, at 28, 30.

ernment officials were being paid more than the Prime Minister of Great Britain.²⁷⁹

The variation in the private sector between the working conditions and benefits for white expatriates, as contrasted to those for the Chinese, was even more extreme than in the public sector, even when a European and a Chinese were employed at the same level doing the same job.²⁸⁰

The link between the European civil servants and the leading business magnates in Hong Kong led one local politician to conclude that the freedom of the people was endangered by these bureaucrats who were the mere "puppets of big and powerful" corporations.²⁸¹ In fact, when some of the highest level government officials retired, they often chose to stay in Hong Kong at top-rank, private corporate positions. The former Financial Secretary, for example, became Vice-Chairman of the China Light and Power Company, and the ex-Secretary for Education and Manpower took the position of Managing Director of the Kowloon Motor Bus Company.²⁸²

This economic stratification in Hong Kong has created two different worlds divided by race.²⁸³ The caste system in Hong Kong is alive and well. The life of the Governor in 1991 exemplified the indul-

279. Kevin Murphy, *The Perks of Power*, S. CHINA MORNING POST, June 8, 1991, at 1. For example, the Financial Secretary in 1991 received a base annual salary of US\$216,000, an entertainment allowance of US\$25,000 a year, an official residence cared for by four staff members, and a Jaguar automobile. Kelly McParland, *Hong Kong Spoils Elitist Bureaucrats*, FIN. POST, Dec. 3, 1991, at 11.

280. *Carving up the Expat Package*, S. CHINA MORNING POST, Feb. 20, 1993, at 1. The European corporate chiefs in Hong Kong are the second highest paid in Asia, and the twelfth highest in the world. Murphy, *supra* note 279, at 1. The average remuneration package for a British employee of a corporate firm in Hong Kong, as of 1992, was almost US\$200,000 a year, which was surpassed by the average US\$260,000 received by American expatriates. Kennis Chu, *Americans Lead the Hong Kong Perks Race*, S. CHINA MORNING POST, July 12, 1992, at 1.

281. *Bernacchi Lashes out at Haddon-Cave*, S. CHINA MORNING POST, Nov. 14, 1979 (comments of Brook Bernacchi).

282. *Hong Kong: Top Civil Servants to Remain in HK*, S. CHINA MORNING POST, Apr. 10, 1994, at 15.

283. This will change significantly, at least at the governmental level, in 1997. The Joint Declaration requires the top echelon of the civil service to be "local residents"—defined as permanent residents of the People's Republic of China. The Association of Expatriate Civil Servants of Hong Kong reacted to this mandate in this way:

There is a wide appreciation that the arrangements in the Draft Agreement will adversely affect Expatriate Civil Servants. This effect is anticipated and accepted by many of our members as the inevitable result of decolonization Although we foresee that fewer expatriate civil servants will be employed in the future, the Draft Agreement will all in all provide a solid basis for the majority of Hong Kong people upon which to build their futures.

gences of the British: a domestic staff of thirty—a chief steward, a head chef, four number-two chefs, a tailor, twenty-two domestic servants, a Rolls Royce and two Daimlers (chauffeur-driven), and a one hundred foot long boat.²⁸⁴ And even though the vast majority of Chinese live in extraordinarily crowded housing conditions, the average British expatriate with two children lives in a house or apartment of 2,500 square feet.²⁸⁵ The far superior position of whites, whether British, Australian, Canadian, or American, is a constant reminder to the Hong Kong Chinese that they are still considered inferior residents in their own land.

VI. Conclusion

The British insistence on selling opium—a drug which was illegal in both Great Britain and China—to the Chinese people, led to a war which resulted in the annexation of Hong Kong Island. Britain proceeded to institute laws to regulate and control the Chinese in Hong Kong. The motivation behind some of this legislation was clearly racist: Chinese could not be out at night without passes; they were required to carry lanterns with them if they did have passes; they were severely and publicly beaten if they broke the law; their homes could be searched by the Colonial authorities at any time; and they were not allowed to live on any land that was 788 feet above sea level.

There were no significant regulations regarding sanitary conditions or housing density. The goal of British land owners, to maximize profits, took priority over the health and well-being of the Chinese. Even the bubonic plague epidemic and reports by expert sanitation engineers demanding reforms did not prompt governmental action.

English—the symbol of colonial rule—was the only official language. The laws and regulations were published only in English, even

Report of the Assessment Office, 1 SUBMISSIONS MADE BY ORGANIZATIONS TO THE ASSESSMENT OFFICE, ARRANGEMENTS FOR TESTING THE ACCEPTABILITY IN HONG KONG OF THE DRAFT AGREEMENT ON THE FUTURE OF THE TERRITORY 447-48 (Hong Kong Government Information Service 1984). Just who these local residents will be remains a question. A survey conducted in the late 1980s of the Hong Kong Chinese who were in the upper grades of the civil service showed that over 50% intended to emigrate by 1997. DAVIES & ROBERTS, *supra* note 258, at 3. A 1994 survey conducted by the Department of Public and Social Administration of the City Polytechnic of Hong Kong, found that a third of the highest level Chinese civil servants planned to leave by 1997, and 30% were undecided. Simon Holberton, *Two Stones Roll into China's Path to Hong Kong*, FIN. TIMES, Feb. 25, 1994, at 6. The survey focused on 1,000 management-level civil servants. *Id.*

284. Murphy, *supra* note 279, at 1.

285. Chu, *supra* note 280, at 1. Fifty-five percent of all British employees in Hong Kong also receive a fully-paid country club membership. *Id.*

though the population of Hong Kong was ninety-eight percent Chinese. Popular participation in the government's decision-making was also precluded. The people's inability to comprehend the government's explanations of policy or even the debates in the Legislative Council have resulted in alienation and apathy. As students began a movement for Chinese to become an official language, the British responded by force and arrests.

Now Britain, without regard to the millions of Chinese residing in Hong Kong, has entered into an agreement with the People's Republic of China to hand Hong Kong over to China in 1997. The wishes of the people that Britain has ruled for over 150 years were ignored. The Hong Kong Chinese were never permitted by their British colonizers to experience democracy, equality, or independence, and it appears now that they never will.